ANNOTATED
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SERIES

Exegetical Commentary on the Code of Canon Law

Volume III / 1

MTF

W&L
WILSON & LAFLEUR

EXEGETICAL COMMENTARY ON THE CODE OF CANON LAW

PREPARED UNDER THE RESPONSABILITY OF THE
MARTÍN DE AZPILCUETA INSTITUTE
FACULTY OF CANON LAW
UNIVERSITY OF NAVARRE

Edited by
Ángel Marzoa, Jorge Miras and **Rafael Rodríguez-Ocaña**

Volume III/1

English language edition
General editor: **Ernest Caparros**
Review coordinator: **Patrick Lagges**

Wilson & Lafleur
Montreal, Canada

Midwest Theological Forum
Chicago, Illinois

2004

Nihil obstat quominus imprimatur, Marianopoli, die 22ª Ianuarii 2004,
Michaël Parent, c.s.s, J.C.L., vicarius episcopalis, cancellarius, Censor deputatus, Curiæ diocesanæ.
Imprimatur, Marianopoli, die 22ª Ianuarii 2004, N.P. 3/2004
Ioannes Claudius cardinalis Turcotte, archiepiscopus Marianopolitanus.

Library of Congress Cataloging-in-Publication Data

Comentario exegético al Código de derecho canónico. English.
Exegetical commentary on the Code of canon law/Martín de Azpilcueta Institute, Faculty of Canon Law, University of Navarre; edited by Angel Marzoa, Jorge Miras, and Rafael Rodríguez-Ocaña.
p. cm.
Fundación Universitaria de Navarra.
Includes bibliographical references and index.
ISBN 1-890177-33-4 (5 vol. set: alk. paper)
1. Catholic Church. Codex Juris Canonici (1983) 2. Canon law. I. Marzoa, Angel. II. Miras, Jorge. III. Rodríguez-Ocaña, Rafael. IV. Instituto Martín de Azpilcueta. V. Title.
KBU2212.C65513 2004
262.9'4--dc22

2003066506

Legal deposit, 3rd quarter 2004, Bibliothèque nationale du Québec
Legal deposit, 3rd quarter 2004, National Library of Canada

Canada

We acknowledge the financial support of the Government of Canada through the Book Publishing Industry Development Program (BPIDP) for our publishing activities.

Government of Québec – Tax credit for book publishing – Administered by SODEC

ISBN 2–89127–620–5 (5 Volume set) (Wilson & Lafleur)
ISBN 1–890177–33–4 (5 Volume set) (MTF)
ISBN 2–89127–624–8 (Volume 3/1) (Wilson & Lafleur)
ISBN 1–890177–37–7 (Volume 3/1) (MTF)
Printed in Canada

Wilson & Lafleur Ltée
40, rue Notre-Dame Est
Montréal (Québec) Canada H2Y 1B9
Tel.: (514) 875-6326 or 1-800-363-2327
Fax: (514) 875-8356
www.wilsonlafleur.com

Midwest Theological Forum
1420 Davey Road
Woodridge, IL 60517 U.S.A.
Tel.: (630) 739-9750
Fax: (630) 739-9758
e-mail: mail@mwtf.org

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PRINCIPAL ABBREVIATIONS

AA	VATICAN II, Decree on the Apostolate of Lay People, *Apostolicam actuositatem*, November 18, 1965, *AAS* 59 (1966) 837–864
AAS	*Acta Apostolicae Sedis: commentarium officiale*
AG	VATICAN II, Decree on the Church's Missionary Activity, *Ad gentes*, December 7, 1965, *AAS* 58 (1966) 947–990
AIE	SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Decree *Ad instituenda experimenta*, June 4, 1970, *AAS* 62 (1970) 549–550
AkK	*Archiv für katholisches Kirchenrecht*, Mainz, 1857–
Alloc.	Allocution
AP	Apostolic Penitentiary
AP	PAUL VI, motu propio *Ad pascendum*, August 15, 1972, *AAS* 64 (1972) 534–540
Ap.	Apostolic
Ap. Const.	Apostolic Constitution
Ap. Exhort.	Apostolic Exhortation
art. / arts.	article / articles
AS	PAUL VI, motu proprio *Apostolica sollicitudo*, September 15, 1965, *AAS* 57 (1965) 775–780
BB	*Benedicti Papae XIV Bullarium*, Venice 1768
Bk.	Book
BM	*Bibliographia missionaria*
BOCEE	*Boletín Oficial de la Conferencia Episcopal española*
BOEE	*Boletín Oficial del Estado español*
BRC	*Bullarii Romani Continuatio, Romae 1835–1855*
C	*Causa (Decreti pars secunda)*
c. / cc.	canon / canons
CA	PIUS XII, motu proprio *Crebrae allatae*, February 22, 1949, *AAS* 31 (1949) 89–117
CAd	SECRETARIAT OF STATE, Rescript *Cum admotae*, November 6, 1964, *AAS* 59 (1967) 374–378

LIBER III
De Ecclesiae munere docendi

BOOK III
The Teaching Office of the Church

INTRODUCTION

José Luis Illanes

From a systematic perspective, the most important innovation introduced by the *CIC* in the work of the canonical system was the abandonment of a structure based on the distinction between people, things, and actions (which the *CIC*/1917 had used, following a tradition that goes back to the Roman jurist Gaius) in favor of a division essentially based on a distinction between the *tria munera Christi*, the threefold office—prophetic, sanctifying and ruling—that encompass Christ's actions and, consequently, the Church's mission.

The Church, unlike civil society, is not only (or at least is not primarily) a body in which relationships arise between individuals and different social groups, but also (especially in the larger sense) a community or people that is weaving its way through history by continuing and perpetuating the saving mission of Christ. This is how the Second Vatican Council proclaimed it with particular clarity, transcending the ecclesiological concepts centered on an understanding of the Church as a society, or more

accurately, integrating these concepts into a vision whose core is the basic Christian truth: reality and the revelation of a God that speaks to all people through Christ and through the Church in such a way that the Church must be understood in the light of the divine communication for which it was established and out of which it has arisen.

The Council, both in the Apostolic Constitution *Lumen gentium* itself and in other related documents, did not limit itself to formulating this doctrine in general terms, but rather proceeded to specify the functions or duties which would reflect the mission of Christ and the Church, using the systematization offered by the distinction among the *tria munera*. The Council, in its exegesis of the contents of these threefold office, usually followed a chronological order, beginning with the prophetic office, proceeding to the sanctifying office, and ending with the ruling office: Christian life, in fact, begins with faith (which is made possible by proclaiming the Gospel), grows through the sacraments and other means of grace, and expresses itself in effective Christian living in which service is ordered to pastoral action.[1]

It was logical, then, that the *CIC*, in its desire to translate into juridical norms the Church's understanding of itself as understood and expressed in the Second Vatican Council, should use the distinction among the threefold office in exactly the same order as that given above. Consequently, all the norms related to the Church's doctrinal mission—which in the *CIC*/1917 were grouped under part IV, book II (which is devoted to things)—are moved to the forefront in the *CIC* insofar as book III is placed as the first book, following the general norms (book I) and the structure of the people of God (book II), that is devoted to the norms governing the life and the activity of the Church.

In the *CIC*, this systematic approach has not only formal consequences (the placement of material in one part or another of the Code), which is of great importance in and of itself, but also material consequences, which could not help but be the case, given the background perspectives that we have just pointed out on which this approach depends. The eighty-seven canons (cc. 747–833) contained in book III clearly presuppose the eighty-seven canons (cc. 1322–1408) comprising part IV, book II, of the *CIC*/1917, and this is true not only from a historical perspective, but also from an editing perspective: the authors of the *CIC*, in fact, took the canons from the earlier Code as the point of departure for their work, often using

1. For a deeper understanding of the ecclesiology of Vatican II, the commentary of G. PHILIPS continues to be useful; *La Iglesia y su misterio en el Concilio Vaticano II* (Barcelona 1968). Specifically regarding the function of the Church's teaching. cf. J.A. FUENTES, "La función de enseñar," in *Manual de Derecho Canónico* (Pamplona 1988), pp. 373–404; A. MONTÁN, "La funzione di insegnare della Chiesa," in *La normativa del nuovo Codice* (Brescia 1983), pp. 135–176; P. FAYNEL, *La Iglesia*, II (Barcelona 1974), pp. 79–116; C. GARCÍA EXTREMEÑO, "La Iglesia, comunidad profética," in *Gran Enciclopedia Rialp*, XII (Madrid 1973),pp. 419–425; B. VAN LEEUWEM, "La participación en el ministerio profético de Cristo," in G. BARAÚNA (ed.), *La Iglesia del Vaticano II*, I (Barcelona 1966), pp. 479–504.

not only the ideas contained in these canons, but also the exact wording and phrasing. There is, therefore, continuity between the two codes, but at the same time there are clear differences; on one hand, several canons in the new Code are totally new, and on the other hand, in the instances where the *CIC* retains texts from the *CIC*/1917, these texts have been thoroughly reworked to emphasize the conciliar doctrine as mentioned above, i.e., a vision of the Church as a community that lives in Christ and proclaims it in order to pass on and spread the life that comes from Him.

To be more specific, we may say that the presentation of the Church's doctrinal mission as contained in book III rests on two fundamental principles:

(a) An understanding of the Church as a community that is sent into the world and therefore—as has already been said—cannot be understood or described without reference to its mission; this precludes a merely static and descriptive approach and allows a transition to an approach that is dynamic or pastoral as well as descriptive.

(b) An understanding of the Church as a community of diverse people, all of whom participate, albeit in different ways, in the common mission; this precludes an exclusively hierarchical vision and allows for a transition to an approach of a communal nature instead.

Let us look briefly, obviously in general terms, at how these principles are applied and made specific in book III as an introduction to reading the book.

1. *The teaching office of the Church in the context of the Church-world relations*

From the beginning of the book to the end, the Church is seen as a community endowed with a mission, a community sent to the world to proclaim Christ and spread the Gospel. The Code, it should be reiterated, is thus clearly consistent with the Second Vatican Council, not only in its faithfulness to the letter of the texts, but also in its participation in their basic orientation: a clear option in favor of an apostolic and evangelizing approach. The nineteenth century was one of profound confrontations and tensions, and the Church, in this context, adopted more than once a defensive posture, as if feeling a need to affirm its own internal cohesion, above all else, under the pressure from rational, secularizing ideas. The Second Vatican Council, resolutely continuing and extending older acts and decisions, closed this historical era. However large the problems and vicissitudes are that history and cultural winds may bring about, Christians, not neglecting the constant need to remain strong in the faith, cannot barricade themselves behind defensive attitudes; instead, they must recognize that they are the depository of a gift transcending them that the world is waiting for—the truth and life in Christ—and feel that they are thus sent to this world to make this gift known.

Canon 747 §1, with which book III begins, clearly states this: "It is the obligation and inherent right of the Church, independent of any human authority, to preach the Gospel to all peoples ... for it is to the Church that Christ the Lord entrusted the deposit of faith, so that by the assistance of the Holy Spirit, it might conscientiously guard revealed truth, more intimately penetrate it, and faithfully proclaim and expound it." The text retains the content and at times the phrasing of c. 1322 of the *CIC*/1917 (with which it agrees on the need to emphasize the inherent nature—based on the mission given by Christ, which did not arise from any human agency—of the teaching office that is incumbent upon the Church), but, broadening the scope and changing the tone, it speaks first of duty and only then of rights in order to emphasize more clearly the mission or sending forth that the gift of faith entails.

This is the point of departure for all of book III, whose intent is to collect and systematize norms applicable to the entirety of activities through which the teaching office unfolds: the ministry of the word (cc. 756–761), which includes preaching (cc. 762–772) and catechesis (cc. 773–780); missionary duties (cc. 781–792); Catholic education (cc. 793–821); and participation in instruments of social communication (cc. 822–832). A mere reading of this list—confirmed by a study of the history of its phrasing—is enough to see that these activities are given in a logical sequence that begins with activities that explicitly and formally involve passing on the divine word (preaching and catechesis), continues with presentation of the Gospel in areas where it has not yet been proclaimed (missionary work), and ends with duties (education and communications efforts) that, although not in themselves necessarily involving a contribution to spreading or deepening the faith, may do so and in fact do so, playing a leading role in shaping opinions and conscience, especially in today's society.

At first glance, this systematic sequence may evoke the distinction between *ad intra* and *ad extra* Church activity, i.e., those focused within the Christian community and those focused outside the Christian community. This makes sense, since preaching and catechesis are primarily activities within the Church, while education and other communications efforts, to a greater or lesser extent, depending on the situation, are directed at the culture as a whole, recognizing that the Church exists in a world with which it has a relationship and to which it is directed. However, this should not be carried to an extreme, since the boundaries are not really sharply defined: it is obvious, in fact, that preaching, although primarily directed to the Christian community, also has a dimension (sometimes even a primary dimension) of proclaiming or presenting the faith to people that have not yet confessed the faith; and conversely, that education and participation in social communication affect not only the general public, but also (and in more than one way, decisively) shape the Christian community, in close unity with preaching and catechesis, as the Code itself points out (cf., e.g., c. 761).

The truth is that the distinction between *ad intra* and *ad extra* activities, although it fits well with reality, cannot at any time be understood as

set in concrete, at least with respect to the Christian community, since the Church spreads outside itself what it has received and possesses itself: life in Christ. What we were trying to emphasize by mentioning this distinction is the consistency with which book III attempts to present all the norms within the context of mission, thereby addressing not only the internal life of the Church, but also its extension into the world. The Code thus radically transcends exclusively legalistic or primarily defensive concepts and adopts a perspective that makes it possible to explain even norms that are restrictive in nature (such as norms on reviewing and approving books: cc. 823ff), whose purpose is and cannot be anything other than to help ensure and promote fidelity to the truth of Christ, on which effective service in the name of the mission depends, which thus implies that these norms too should be placed in a dynamic context.

This is not the time to assess the extent to which this apostolic, dynamic vision in fact informs the material under each heading in book III. An undertaking of this nature would be more appropriate for detailed commentaries. However, it is appropriate to point out that, in any case, it prevails in the presentation as a whole, as is clear from the above analysis of the general plan of the book, and other details confirm it, such as ending the section on the magisterium and its due assent with c. 755, which expressly mentions ecumenism; the importance given to regulating universities and institutions of higher learning whose purpose is a synthesis of faith and culture (cc. 807–814); and repeated references to social communications (cc. 761, 772, 804). One final aspect will complete the description of this dynamic attitude or orientation: the decision (one of the innovations introduced in this Code) of devoting an entire title to missionary activity, thereby placing the Church and its teaching office in a context of full universality. In the section of the *CIC*/1917 that is the forerunner of book III of the *CIC*, the missions were in fact mentioned, but in a completely different sense (popular missions in Christian areas: cc. 1349–1351 *CIC*/1917), and with no reference whatever to a missionary activity per se. Canons 781–792 of the *CIC* thus entail a radical change, the content of which was inspired by Vatican II texts, particularly the Decree *Ad gentes*.

2. *The teaching office of the Church, a task and responsibility of the Christian community*

The second of these principles (the Church as a community of members who all participate in the common mission to which they are called to contribute actively), in the specific area in question (the teaching task or mission), implies that the *CIC* is completely abandoning a concept that had been widely taught in pre-conciliar theology and canon law: the distinction between a teaching Church and a discerning Church, i.e., a Church that is to teach and a Church that is to be taught. In reality, the whole Church is a discerning Church,

a Church that listens to the proclamation of the Gospel and allows itself to be weighed against and taught by the Gospel, and at the same time, and inseparably so, a teaching Church, although in different ways—a Church that, having received the divine word, has the mission and ability to spread it.[2]

One of the first and most conspicuous consequences of this deepened theological understanding of the essence of the Church has been the name change of the section of the Code we are now discussing: the parallel section of the *CIC*/1917 (part IV, book II) was in fact entitled, "The Ecclesiastical Magisterium" (*De magisterio ecclesiastico*); book III of the *CIC*, however, is entitled "The Teaching Office of the Church" (*De Ecclesiae munere docendi*). In 1917, the focus was on the people in the Church who hold authority, more specifically, authority in the area of doctrine; this meant people who, above everything else and almost exclusively, have teaching offices *within* the Church. In 1983, on the other hand, we are concerned with the *Church's* teaching office, presupposing and documenting later in the book that the Church as a whole is the depository of Christ's message and is responsible for effectively spreading this message.

Remaining consistent with this, the *CIC*/1917, in setting the tone, mentions that Christ has given the Church the deposit of faith in the first canon of part IV, book II, to which the following norms were to conform, and that it is incumbent upon the Church to *guard* and *expound* revealed doctrine: this has been the exegesis from the beginning, within the purview of the magisterium and related decisions. The parallel canon of the *CIC* (c. 747) adds two other verbs, *deepen* and *proclaim*, which indicate the broad range of functions and duties that may be and in fact are found in a community, all of whom both receive and pass on the Gospel.

The *CIC* certainly is fully aware that this duty to receive and pass on is materialized in diverse functions, one of which (without question, one of critical importance) is precisely the function of the magisterium. In fact, the *CIC* devotes several canons (749–754) to a discussion of it, describing in much greater detail than the *CIC*/1917 and with language inspired by the Apostolic Constitution *Lumen gentium*, the scope of the prerogative of infalli-

2. For a general understanding of and particular issues regarding the active participation of all Christians in the teaching office of the Church, in addition to the bibliography cited in note 1, see P. LOMBARDÍA, *Lecciones de Derecho Canónico. Derecho constitucional. Parte general* (Madrid 1984), pp. 69–125; F. RETAMAL, *La igualdad fundamental de los fieles en la Iglesia según la Constitución dogmática «Lumen gentium"* (Santiago de Chile 1980); G. FELICIANI, "I diritti fondamentali dei cristiani e l'esercizio dei munera docendi e regendi," in *Les droits fondamentaux du chrétien dans l'Église et dans la societé* (Acts of the IV International Congress of Canon Law, Friburgo 1980) (Milan 1981), pp. 221–240; G. DALLA TORRE, "La collaborazione dei laici alla funzione sacerdotale, profetica e regale dei ministri sacri," in *Monitor Ecclesiasticus* 109 (1984), pp. 140–165. For the juridical-canonical place of the Church's teaching office considered in the light of the rights-duties of the faithful, see A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), and J. HERVADA-P. LOMBARDÍA, *El Derecho del Pueblo de Dios*, I: *Introducción. La constitución de la Iglesia* (Pamplona 1970).

bility that characterizes the ecclesiastical magisterium and the assent which is owed to it in both the *CIC* and the *CIC*/1917.[3] But this reference to the magisterium is found within a reference to the Church seen in its entirety: the ultimately substantive reality—whether in and of itself or in the presentation given in the Code—is the teaching mission received by the entire Church for the purpose of proclaiming Christ to all humankind; the magisterium and its infallibility are a gift given to the Church by God precisely for the purpose of effectively and efficaciously carrying out this catholic, universal mission.

This methodological decision—the decision to begin with the teaching mission that is incumbent upon the entire Church and only then, with respect to this mission, discuss the magisterium—has numerous repercussions on the text of book III, even on its systematics, i.e., its division into titles and chapters, a point which we have already mentioned, but which should now be discussed. Let us do so by means of a comparison with the earlier Code, which will also be quite illustrative in this regard.

The *CIC*/1917, having based its text on the authority or function of the magisterium, proceeds in an absolutely logical fashion: it discusses preaching first (which includes catechesis) as the pastors' right and duty, and then seminaries as institutions created to train the pastors that are to proclaim the divine word; it goes on to discuss schools from the point of view of their functions that fall under the Church's authority, and finally ends with a discussion of the right and duty which the Church has with respect to the doctrinal guidance of the faithful through censorship and the possible prohibition of books. The teaching office and its associated rights and duties are thus broadly described.

The *CIC* also begins, as we have seen, by discussing the ministry of the word and catechesis, but nowhere does it mention seminaries (which the Code takes up in another context, book II, where the various categories of the faithful are discussed) and introduces instead a chapter on spreading the Gospel and missionary activity. It ends with a discussion of Catholic education and the spreading of the Gospel by social communications media, an issue that the earlier Code did not bring up positively.[4] Although the *CIC* still follows, in part, the same sequence of subjects as the *CIC*/1917, it clearly makes a transition from regulating the magisterium function to ordering a teaching task that goes beyond the magisterium, although it includes and encompasses it.

3. Regarding the magisterium of the Church, see note 1; also see the synthesis of V. PROAÑO, "Magisterio eclesiástico," in *Gran Enciclopedia Rialp*, XIV (Madrid 1973), pp. 729–736; for a more detailed, although somewhat brief, study, see F.A. SULLIVAN, *Magisterium. Teaching Authority in the Catholic Church* (Mahwah (USA) 1983).

4. In both Codes the explanation concludes with a section dedicated to the treatment of cases in which it is necessary to make the profession of faith.

The development of rules contained in each of the titles and chapters confirms and extends this orientation, which the schema now shows clearly. Let us illustrate it with specific references:

— In discussing the ministry of the word and preaching, a considerable number of canons are devoted to the ministry of the word to be exercised by the bishop or priest. At the same time it should be noted that under certain circumstances the laity may also be allowed to preach in churches and chapels (c. 766) and, above all, the significance of life testimonies for spreading the Gospel should be noted: both testimony from members of institutes of consecrated life (c. 757) and from the lay faithful in the context of their everyday life and secular jobs (c. 759).

— Catechesis is described as a duty of the entire Christian people (cc. 773, 774 § 1), not just pastors. It particularly involves the critical role of parents (c. 774 § 2) and all duly prepared faithful people (cc. 776, 780), so that the duty of the hierarchy, not to exclude other duties, is presented as a duty that largely consists of exhorting, leading, training, and guiding.

— The entire title devoted to Catholic education, especially the first two chapters (on schools, universities and institutes of higher learning), proclaims the Church's right to establish and support schools and institutions of higher learning and makes clear the hierarchy's duties to provide guidance, exhortation, promotion, and vigilance and at the same time emphasizes the irreplaceable role not only of parents in educating their children (cc. 793 § 1, 796, 797), but also of teachers and professors at all levels (cc. 796 § 2, 810) as well as the faithful in general with respect to the promotion of civil legislation respecting the right to a religious education (c. 799).

— It is recognized that all levels of theological training should be accessible to all Christians, and provision is made so that a school, institute, or at least one theology professor should be available to provide classes for the laity also at Catholic universities and institutions of higher learning (c. 811), and there is no mention of any limitation of access by the laity to seminaries (cc. 815ff).

— Finally, the importance given to the fact that social communications media and laity employed by said media should respect the spreading of the Gospel and subsequent Christian training (cc. 772 § 2, 822 §§ 2 and 3) is emphasized. This is the context for the norms on reviewing and approving written materials (cc. 823–832), which are taken from the *CIC*/1917, albeit with significant revisions.

The balance between the two points (participation of all Christians in the teaching mission that is inherent in the Church and the hierarchy's specific function of guarding and explaining the faith) that the text attempts to strike has been achieved in our opinion, except perhaps in the title of social communications media, where the initial declaration of principles is limited to a single canon and the rules on reviewing and approving books seem preponderant. But even in this case, the basic concept is maintained: the

Church as a whole and all Christians—each person according to one's own special ministry, function, or charism—participates in the teaching mission and the spreading of Christ's truth, and the reviewing of books is presented as a service which the hierarchy provides to those carrying out this mission.

3. *Final considerations*

Book III of the *CIC* continues the work of the Second Vatican Council by applying its declarations and provisions—particularly the Apostolic Constitution *Lumen gentium*, the Apostolic Constitution *Dei Verbum* and the Decree *Ad gentes*—to the Church as a community that receives the teaching mission from Christ in the dual sense this mission involves: spreading the Gospel message among those who have never received it or do not know it, and encouraging believers to deepen their faith and live it.

In drafting the canons comprising this book, the redactors, just as they did with other sections of the Code, started with the norms already contained in the *CIC*/1917, although these norms are thoroughly rewritten in the light of the guidelines provided by the Council. In our opinion, the result is satisfactory. There are some background perspectives—the value of faith as an element that gives structure to the Christian community—that are left implicit rather than made explicit, and there are some problems that have moved to the forefront in the years following the Council—the ecclesiastical function of theologians[5]—that are only mentioned or discussed lightly; but book III as a whole attains its objective: the Church described in it and the Church that is guided by this book's canons is a Church with an awareness of mission. And this is undoubtedly critical to the pastoral service that all canonical legislation is called to support.

5. The most important magisterial document on this issue is the Instr. *Donum veritatis* regarding *La vocación eclesial del teólogo,* published by the CDF on May 24, 1990. For more information on this Instruction, the position of the magisterium, and the canonical provisions concerning this topic, see J.L. ILLANES, *Teología y Facultades de Teología* (Pamplona 1991). The text of the Instruction, together with some commentary, has been published in *"Donum veritatis," Istruzione e commenti* (Vatican City 1993), Spanish translation: *El don de la verdad, Sobre la vocación eclesial del teólogo. Instrucción y comentarios* (Madrid 1993).

747 **§ 1. Ecclesiae, cui Christus Dominus fidei depositum concredidit ut ipsa, Spiritu Sancto assistente, veritatem revelatam sancte custodiret, intimius perscrutaretur, fideliter annuntiaret atque exponeret, officium est et ius nativum, etiam mediis communicationis socialis sibi propriis adhibitis, a qualibet humana potestate independens, omnibus gentibus Evangelium praedicandi.**

§ 2. Ecclesiae competit semper et ubique principia moralia etiam de ordine sociali annuntiare, necnon iudicium ferre de quibuslibet rebus humanis, quatenus personae humanae iura fundamentalia aut animarum salus id exigant.

§ 1. It is the obligation and inherent right of the Church, independent of any human authority, to preach the Gospel to all peoples, using for this purpose even its own means of social communication; for it is to the Church that Christ the Lord entrusted the deposit of faith, so that by the assistance of the Holy Spirit, it might conscientiously guard revealed truth, more intimately penetrate it, and faithfully proclaim and expound it.

§ 2. The Church has the right always and everywhere to proclaim moral principles, even in respect of the social order, and to make judgments about any human matter in so far as this is required by fundamental human rights or the salvation of souls.

SOURCES: § 1: c. 1322; PIUS PP. XII, Enc. *Mystici Corporis Christi*, 29 iun. 1943 (*AAS* 35 [1943] 193–248); IOANNES XXIII, Alloc., 11 oct. 1962 (*AAS* 54 [1962] 790); *IM* 3; *LG* 24, 25; *CD* 19; *DV* 7–10; *DH* 13; PAULUS PP. VI, Hom., 7 dec. 1965 (*AAS* 58 [1966] 51–59); PAULUS PP. VI, Exhort. Ap. *Quinque iam anni*, 8 dec. 1970, I (*AAS* 63 [1971] 98–100); Syn. Bish. Decl., 25 oct. 1974, 4; *EN* 6–15; *RH* 19

§ 2: PIUS PP. XI, Enc. *Firmissimam constantiam*, 28 mar. 1937 (*AAS* 29 [1937] 196); IOANNES PP. XXIII, Enc. *Mater et Magistra*, 15 maii 1961, passim (*AAS* 53 [1961] 401–464); IOANNES PP. XXIII, Enc. *Pacem in terris*, 11 apr. 1963 (*AAS* 55 [1963] 301); *CD* 12; *DH* 15; *GS* 76, 89; *HV* 4; Syn. Bish. *Convenientes ex universo*, 30 nov. 1971 (*AAS* 67 [1971] 923–942)

CROSS REFERENCES: cc. 211, 213, 226, 327, 386, 748–762, 773, 774 §2, 793, 1136

COMMENTARY

Eloy Tejero

1. *The CIC*/1917 *and the formulation of this canon*

Canons 747–755 retain the normative core related to the magisterium, which was so prominent in *CIC*/1917 that just as a rubric the subject covers all of part IV, book III. From this it follows that one of the *coetus studiorum* assigned to draft the *CIC* was designated the *coetus de Magisterio ecclesiastico*.[1] However, this *coetus*, which began its work by pointing out which aspects of cc. 1322–1326 of *CIC*/1917 should be retained in the new code and what material from Vatican II should be reflected in the canons being edited,[2] was not the *coetus* that made the most important contributions to the drafting of cc. 747–755; those contributions were made by the *coetus de Lege fundamentali Ecclesiae*,[3] which finished a schema in session IX, cc. 56–60[4] which was then incorporated, almost word for word, into this core of the *CIC*, once the decision was made not to promulgate the draft of the fundamental law of the Church.[5]

A proper understanding of c. 747 § 1 requires the background provided by c. 1322 of *CIC*/1917, §§ 1 and 2 containing the fundamental concept of the text on which we are commenting here, characterized by the vigor with which the basis was formulated—which is absolutely original among human societies—of the Church's right and duty to preach the Gospel to all peoples. From the point of view of the law, c. 747 § 1 is a clear formal step forward with respect to c. 1322 § 1 of *CIC*/1917, which, read literally, set forth a dogmatic thesis without explicitly developing its direct impact in the area of the Church's right and duty to teach the Gospel. One also has to read c. 1322 § 2 of *CIC*/1917 in order for § 1 of this canon to make clear its solid impact in the area of the law, which is better expressed in a single paragraph (c. 747 § 1). In fact, the *CIC* text retains a vigorous grounding and clear statement in the unified wording of a single paragraph of the Church's duty and original right.

1. Cf. *Comm.* 1 (1969), p. 33.
2. Cf. ibid. 7 (1975), p. 150.
3. Cf. ibid. 1 (1969), pp. 29–30.
4. Cf. ibid. 9 (1977), pp. 106–111.
5. Cf. ibid. 16 (1984), pp. 97–98.

2. *The Church is responsible for the divine truth entrusted to it in the deposit of faith*

To use an expression of John Paul II, we can say that the Church is presented in the text of the canon "as the social subject of responsibility for divine truth" (*RH* 19). This is the very meaning of the term—so deeply imbued with legal meaning—as is the case with *depositum fidei*, which was entrusted by Christ to His Church. Having been coined by St. Paul[6] in harmony with the cultural foundation of Roman law, it immediately evokes *quod custodiendum alicui datum*, since *totum fidei eius commissum.*[7] The Church is the social subject of responsibility for divine truth, because "Sacred Tradition and sacred Scripture make up a single sacred deposit of the word of God, which is entrusted to the Church" (*DV* 10).

In the wording of both Codes, it is always the Church that is the entity to which the *depositum fidei* is entrusted, i.e., "by adhering to it the entire holy people, united to their pastors, remains always faithful to the teaching of the apostles, to communion" (*DV* 10). Because "All of the faithful who have an anointing that comes from the holy one (cf. 1 Jn 2:20 and 27) cannot err in matters of faith. This characteristic is shown in the supernatural appreciation of the faith of the whole people, when, from the bishops to the last of the faithful they manifest a universal consent in matters of faith and morals" (*LG* 12).

The deposit of faith is entrusted to the Church by Christ, and the promise of the Holy Spirit's assistance, provided the faithful are guided in their actions in the supernatural direction of the faith, implies acceptance of the guide that the magisterium should provide them; because then they "receive not the mere word of men, but truly the word of God" (*LG* 12). Since the function of the magisterium arises from the very economy of the faith and is not something extrinsic to Christian truth or something added to the faith, all activities undertaken by the Church that are related to the *depositum fidei*, by its very nature, always and necessarily entail faithful acceptance of the magisterium.[8]

This reciprocal intervention of the Church in and for the magisterium explains that determined activities which are to be developed with respect to the *depositum fidei*, such as its sacred custody and faithful preaching, are included in both codes of canon law as activities undertaken by the Church with the assistance of the Holy Spirit (c. 1322 § 1 *CIC*/1917; c. 747 § 1 *CIC*), while Vatican II attributes these same activities, described in the same terms, to the magisterium (*DV* 10).

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6. Cf. 1 Tim 6:20; 2 Tim 1:11–14; G. DAMIZIA, "La funzione di insegnare nella Chiesa," in *Il novo Codice di Diritto canonico. Novittà, motivazione e significato* (Rome 1983), p. 273.
7. *Digestum*, 26, 3, 1.
8. Cf. *Comm.* 9 (1977), pp. 106–107.

3. *The variety of activities of the Church with regard to revealed truth*

Given this reciprocal implication, the concept set forth in c. 747 § 1, expressly referring to the Church, reflects the extensive range of activities undertaken in the exercise of *munus docendi* by all holy people in unity with their pastors. The Church performs all these activities assisted by the Holy Spirit in faithfulness to the *depositum fidei* received from Christ. When the canon states that the Church guards it, contemplates it deeply, proclaims it, expounds it, or preaches about it, it would seem to refer to the extensive range of the Church's activities with respect to *munus docendi,* which will be discussed throughout book III.

However, the abundant wisdom possessed by the people of God as a whole and the wide range of the activities of the Church with the assistance of the Holy Spirit in its faithfulness to the *depositum fidei* received from Christ, are mentioned in c. 747 § 1 to give the reason for the *officium et ius nativum Ecclesiae* to preach the Gospel to all peoples, independent of any human authority.

This is a fundamental aspect of *libertas Ecclesiae,* which, having been won by the blood of Christ, is part of the riches of the earthly city itself and is a basic principle in the Church's relations with public powers and in the entire civil order (*DH* 13). Thus the Church, which "does not place its trust in privileges offered by civil authorities; it even waives its option of exercising certain legitimately acquired rights if exercising these rights would tarnish the integrity of its witness ... always and everywhere states that it is incumbent upon the Church to preach the faith with true freedom" (*GS* 76).

Since the divine revelation entrusted to the Church is public and for all people, the Church's responsibility is likewise public and applies to all individuals: its duty and original right to make the voice of the Gospel resound in the world, assisted by the Holy Spirit. This public nature is true not only of the canonical system itself, which has to do with such typically public activities as those involved with ecclesiastical magisterium or preaching, but also secular systems, whose laws cannot ignore the Church's freedom in this regard without breaking a basic principle of Church/state relations and of the entire civil order (*DH* 13).

But this does not thereby exhaust the juridical relations arising from the *depositum fidei* entrusted to the Church: the *officium nativum* to preach the Gospel also translates into a true "right to be assisted by their Pastors ... especially by the word of God" (c. 213). As Errázuriz[9] has pointed out, this right may be conceived of as a true subjective public

9. Cf. C.J. ERRÁZURIZ M., *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 22–33.

right reflected in the canonical system as a fundamental right of the faithful. This right may also be seen in private intersubjective relations of the *munus docendi* itself, which may entail duties of justice, such as those arising from parent/child relations described in cc. 226, 762, 793 and 1136. Canon 747, although it does not go on to mention this varied range of rights and duties that underlie the text, does however make explicit a specific area that is particularly applicable in our day: the Church's right and duty to use even its own means of social communication. Vatican II (*IM* 3) called this right related to the duty to evangelize *ius nativum Ecclesiae*, which rightly led the *coetus de Lege fundamentali Ecclesiae* to believe that it should be included in this canon.[10]

4. *Competence of the Church in proclaiming moral principles*

Canon 747 § 2 was also written by the *coetus de Lege fundamentali Ecclesiae* and typifies an area of competence inherent in the magisterium that was not mentioned in *CIC*/1917: a reference about the moral order.

A fundamental discernment underlies all the nuances of the text: "Anything having to do with morals (*mores*) may be a proper subject for the magisterium, since the Gospel, the Word of Life, inspires and moderates the entirety of human actions."[11] From this it follows that "According to Christian faith, knowledge and life, truth and existence, are intrinsically interlinked."[12] The Church must proclaim moral principles, since "in forming their consciences the faithful must pay careful attention to the sacred and true doctrine of the Church" (*DH* 14). The fact that dogma and morality constitute different branches of theology does not authorize anyone to think that the wisdom and practice of the Christian life itself are isolated or that faith should not be sustained in discipline and moral practice.[13]

The authentic proclamation and teaching of the Church also encompasses "the principles of the moral order which spring from human nature itself" (*DH* 14). "By reason of the connection between the orders of creation and redemption and by reason of the necessity, in view of salvation, of knowing and observing the whole moral law, the competence of the

10. Cf. *Comm.* 9 (1977), pp. 106–107.

11. CDF, Instr. *Donum veritatis*, cit., no. 16, p. 1557. Cf. *VSp*, 4, 37, 39, 53.

12. CDF, Instr. *Donum veritatis*, cit., no. 1, p. 1550.

13. Cf. T. LÓPEZ, "'Fides et mores' en Trento," in *Scripta Theologica* 5 (1973), pp. 175–221; A. DEL PORTILLO, "Magistero de la Chiesa e teologica morale," in *Persona, verità e morale (Atti del Congresso internazionale di Teologia Morale, Roma May 7–12, 1986)* (Rome 1987), pp. 19–23; JOHN PAUL II, *Discorso ad alcuni docenti di Teologia Morale*, April 10, 1986, in *AAS* 88 (1986), p. 1102; F. OCÁRIZ, "La competenza del Magistero della Chiesa 'in moribus,'" in *"Humanae vitae": 20 anni dopo (Atti del II Congresso Internazionale di Teologia Morale, Roma November 9–12, 1988)* (Milan 1989), pp. 125ff; G. MUCCI, "La competenza del Magistero infallibile," in *La Civiltà Cattolica* 139 (1988), III, pp. 17ff.

Magisterium also extends to that which concerns the natural law. Revelation also contains moral teachings which per se could be known by natural law. Access to them, however, is made difficult by man's sinful condition."[14] It must also be noted that natural law—as Hervada has pointed out—is part of evangelical law, which, far from destroying nature, perfects it; the proclamation of natural law thus becomes part of the Church's mission.[15] It is obvious that the moral principles related to "the social order," which are mentioned in § 2, are part of principles arising from human nature itself, the social dimension of which is undeniable; but the complexity of issues in this area makes its explicit mention among the domains of the magisterium especially appropriate.

This competence is consistent with the autonomy of temporal realities and human societies and their dependence on God the Creator (*GS* 36), while making it possible at the same time to allow the Church to make full use of its opportunities to bring to humanity the aid which (by the nature of its mission) it is its duty to grant (*GS* 42). This magisterium has special importance in enabling the lay faithful to carry out their mission of incorporating divine law into the building up of the earthly city and strongly encourages all members of the Church to overcome the grave illness of our time, which Vatican II diagnoses as the separation of the faith professed by Christians from the daily life of many (*GS* 43), the cure of which is in the unity of life.[16]

The general provisions on the magisterium (cc. 749–754) should be applied to the form in which the Church hierarchy exercises its competence in the magisterium under discussion here and in the various priorities of its formulations.

5. *The judgment of the Church regarding the morality of any human undertaking*

The Church's duty to proclaim moral principles can never end. This canon stresses the importance of the Church's judgment of the morality of any human understanding, which also falls within the Church's domain.[17]

14. CDF, Instr. *Donum veritatis...*, cit., no. 16 , p. 1557.

15. Cf. J. HERVADA, "Magisterio social de la Iglesia y libertad del fiel en materias temporales," in *Studi in memoria di Mario Condorelli*, I/2 (Milan 1988), pp. 804–805; *VSp*, 36, 37, 43, 44, 48, 50, 51, 52.

16. Cf. I. CELAYA, "Unidad de vida y plenitud cristiana," in *Mons. Josemaría Escrivá de Balaguer y el Opus Dei. En el 50 aniversario de su fundación* (Pamplona 1985), pp. 321–340.

17. Cf. A. BERNÁRDEZ CANTÓN, "El 'munus docendi' y los asuntos temporales en el Código canónico," in *Aspectos jurídicos de lo religioso en una sociedad plural. Estudios en honor del Dr. D. Lamberto de Echeverría* (Salamanca 1987), pp. 131–136; A. DE FUENMAYOR, "El juicio moral de la Iglesia sobre materias temporales," in *Ius Canonicum* 12 (1972), pp. 106–121.

Vatican II ranks this duty and right among those that should be exercised everywhere at all times (*GS* 76). Reference to fundamental human rights and the salvation of souls as values guiding such judgments on the morality of human affairs, including political issues, also arises from this same conciliar text.

For a better understanding of the scope the Church gives to fundamental human rights, it should be remembered that Vatican II not only stresses that "contemporary man is becoming increasingly conscious of the dignity of the human person" (*DH* 1; *GS* 25 and 73), but also that "the social order and its development must constantly yield to the good of the person" (*GS* 26 and 29). The Church's action in this area is so deeply based that Vatican II states: "There is no human law so powerful to safeguard the personal dignity and freedom of man as the Gospel which Christ entrusted to the Church" (*GS* 41; cf. *VSp* 95–98).

748 **§ 1. Omnes homines veritatem in iis, quae Deum eiusque Ecclesiam respiciunt, quaerere tenentur eamque cognitam amplectendi ac servandi obligatione vi legis divinae adstringuntur et iure gaudent.**

§ 2. Homines ad amplectendam fidem catholicam contra ipsorum conscientiam per coactionem adducere nemini umquam fas est.

§ 1. All are bound to seek the truth in the matters which concern God and his Church; when they have found it, then by divine law they are bound, and they have the right, to embrace and keep it.

§ 2. It is never lawful for anyone to force others to embrace the catholic faith against their conscience.

SOURCES: §1: c. 1322 §2; IOANNES XXIII, Enc. *Ad Petri Cathedram*, 29 iun. 1959 (*AAS* 51 [1959] 497–531); *DH* 1
§2: c. 1351; Secr. St. *Notif.*, *Se referant*, 25 ian. 1942; *DH* 2, 4; *AG* 13

CROSS REFERENCES: cc. 96, 212 §3, 218, 219, 227, 747, 749–754

COMMENTARY

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A direct relationship may be seen between § 1 of this canon and the preceding canon: the statement of the Church's right and duty to preach the Gospel and proclaim the moral principles flowing from it (c. 747) is followed by c. 748 § 1, which states the obligation of all people to seek the truth in matters concerning God and His Church. However, c. 748 is not the fruit of the work of the *coetus de Lege fundamentali Ecclesiae*, as is c. 747. Instead, its origin lies in successive revisions made by the *coetus de Magisterio ecclesiastico*, which was convinced of the need to add the doctrine contained in this canon to the *CIC*, in accordance with the magisterium of the Second Vatican Council.[1] Thus it was that a *canon novus* (c. 2) appeared in the 1977 *Schema canonum*, and it was retained in later schemata, with only stylistic changes, as far as the definitive text still in effect today is concerned.[2]

1. Cf. *Comm.* 7 (1975), p. 150.
2. Cf. *Schema* of 1980, c. 707, p. 170; *Schema* of 1982, c. 748, p. 139.

1. *The moral obligation that all people have to seek the truth about God and his Church*

This universal obligation, which is set forth in § 1, arises from the fact that "God himself has made known to the human race how all people by serving him can be saved and reach happiness in Christ" (*DH* 1). All persons are obligated to seek the truth about God and his Church, because in the mystery of salvation, "he was manifested in the Spirit, seen by angels, preached among the nations, believed by the world, taken up in glory" (1 Tm 3:16). Since "the grace of God has appeared offering salvation of all people" (Titus 2:11), we cannot escape due punishment if we take such a great blessing so lightly (cf. Heb 2:2–4).

The very fact that everyone is obligated to seek the truth of God because he has revealed himself to everyone makes it evident that the Church to which God calls everyone should also be catholic and universal. "It was for this purpose that God sent his Son, whom he appointed heir of all things that he might be teacher, king and priest of all, the head of the new and universal People who are God's sons and daughters" (*LG* 13). Just as the Church should "bring about the obedience of faith for the sake of Jesus' name among all the nations" (Rom 1:5), all people, even if they are not a *persona in Ecclesia* by virtue of baptism (cf. c. 96), are potential members of the Church and are called to full incorporation in it. In a certain sense, everyone faces the Church and is in the Church.[3]

With respect to "for the grace of God has appeared for the salvation of all people" (Titus 2:11), one must consider Vatican II's doctrine that "all people, because they are persons endowed with reason and free will and therefore bearing personal responsibility, are both impelled by their nature and bound by a moral obligation to seek the truth, especially religious truth" (*DH* 2). "Ever since the creation of the world invisible realities, namely, God's eternal power and divinity have become visible, recognized through the things he has made" (Rom 1:20); then "the highest norm of human life is the divine law itself" (*DH* 3; cf. *VSp* 55, 57, 61, 63–64). This is the Catholic doctrine that has been expounded since the beginning of the Church and it was confirmed by the Second Vatican Council when it stated that "it leaves intact the traditional Catholic teaching on the moral duty of individuals and societies towards the true religion and the one Church of Christ" (*DH* 1).[4]

3. Cf. P. LOMBARDÍA, "Contribución a la teoría de la persona física en el ordenamiento canónico," in *Ius Canonicum* 29 (1989), pp. 101–102.
4. Cf. J. RATZINGER, *Iglesia, ecumenismo y política* (Madrid 1987), pp. 179ff.

2. *The canonical understanding of the duty and the right to embrace the truth about God and his Church*

Canon 748 § 1 states that once the truth about God and his Church have been learned, there arises in a person, by divine law, the duty and right to embrace and observe it. This is a duty and right leading to external action and behavior that are of fundamental juridical importance, even though they arise from a moral conscience that has glimpsed the dictates of divine law. The duty to embrace the truth about God and his Church is so prominent in the juridico-canonical system that it can only be fulfilled by becoming a member of the Church and becoming part of the system. The same must be said of the right to embrace and observe the truth about God and his Church: this right must be exercised before legitimate representatives of the ecclesial community and defended from any unjust interference or illegitimate obstacles introduced by civil authorities.

As can be seen, religious freedom, which is shared by this canon, is far from being grounded on moral or religious impartiality, as if all positive religions were equal. Religious freedom arises from the freedom with which every human conscience—which should not yield to obstacles to the free exercise of rights arising from religious truth nor be made to confess it under unjust coercion—perceives the truth about God and his Church, and "can impose itself on the mind only in virtue of its own truth, which wins over the mind with both gentleness and power" (*DH* 1). That is to say, the truth about God and his Church must be arrived at "in a manner that is appropriate to the dignity of individuals and their social nature, namely, by free inquiry with the help of teaching or instruction, communication and dialogue. It is by these means that people share with each other the truth they have discovered, or think they have discovered, in such a way that they help one another in the search for truth" (*DH* 3).[5]

3. *Freedom of conscience in embracing the Catholic faith*

From what has been said, it is clear that any coercion to force anyone to embrace the Catholic faith against one's own conscience would be contrary to religious freedom. This is a principle already set forth in c. 1351 of the *CIC*/1917, which is reiterated in c. 748 § 2, which states that this is a principle that was defended by the Church prior to Vatican II (*DH* 9–15). Further, the Church has always rejected grounding religious freedom on religious indifference and applying it on that basis. In addition to belief in religious freedom rooted in human dignity and respect for conscience, which claim immunity from coercion by individuals, social groups, or governmental authority, the

5. Cf. C.J. ERRÁZURIZ M., *Il 'munus docendi Ecclesiae': diritti e doveri dei fedeli* (Milan 1991), pp. 107–120.

doctrine of Christian dualism which has pointed out the incompetence of governments in areas involving religious truth since the beginning of the Church is the real basis of freedom vis-à-vis the state.[6]

In any case, in the doctrine of religious freedom as expressed by Vatican II we find what is unquestionably an innovation in that religious freedom is presented as a right under civil law which had not been described as such by the magisterium of the Church. However, since this doctrine has to do with a juridical area other than the canonical system, the *CIC* is silent on these aspects of religious freedom. Here it should only be mentioned in passing that freedom or protection from coercion in religious matters should be recognized in civil law, and not only with respect to individuals, but also with religious communities, to ensure that principles of public order (*DH* 4) and families (*DH* 5) are not violated. Governments, in exercising their duties, should recognize religious freedom at all times and protect it by law (*DH* 6 and 7). Civil authorities should remember that, in order to further the temporal common good, they need to recognize and promote citizens' religious life (*DH* 3).[7]

The Church strives to ensure that the recognition of the right to religious freedom be so full and sincere that, though they cannot be considered identical, both the freedom of the Church and religious freedom are "not just proclaimed in words or incorporated in law but implemented sincerely in practice; only then does the Church enjoy in law and in fact those stable conditions which give it the independence necessary for fulfilling its divine mission" (*DH* 15).

Finally, we should note that the question some raise over the supposed existence of religious freedom within the Church and its own system cannot be resolved by this canon, because it only addresses the freedom to embrace the faith and become a member of the Church, not the order of intra-ecclesial juridical relations or the existence of unquestioned domains of freedom elsewhere, such as the freedom of expression and opinion (c. 212 § 3), the right freely to research the religious sciences and make known the results (c. 218), the right to freely choose a state of life (c. 219), the laity's right of freedom in their earthly affairs (c. 227), etc.[8] But it is obvious that the content of these freedoms is quite different from the right to religious freedom, which is also the case with areas of freedom with respect to the faithful, even in the light of the authority of the various acts of ecclesiastical magisterium described in cc. 749–754.

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6. Cf. P. LOMBARDÍA, "Dualismo cristiano y libertad religiosa en el Concilio Vaticano II," in *Ius Canonicum* 26 (1986), pp. 13–32; C. SOLER, "Sobre el papel del dualismo cristiano en la génesis de la libertad," in *Ius Canonicum* 30 (1990), pp. 287–304.

7. Cf. A. DE FUENMAYOR, *La libertad religiosa* (Pamplona 1974); P. PAVÁN, "El derecho de libertad religiosa en sus elementos esenciales," in *La libertad religiosa* (Madrid 1969), pp. 189–256.

8. Cf. P. LOMBARDÍA, "Libertad y autonomía en la Iglesia," in *Ius Canonicum* 13 (1973), pp. 5–29; E. MOLANO, *La autonomía privada en el ordenamiento canónico* (Pamplona 1974).

749 **§ 1. Infallibilitate in magisterio, vi muneris sui gaudet Summus Pontifex quando ut supremus omnium christifidelium Pastor et Doctor, cuius est fratres suos in fide confirmare, doctrinam de fide vel de moribus tenendam definitivo actu proclamat.**

§ 2. Infallibilitate in magisterio pollet quoque Collegium Episcoporum quando magisterium exercent Episcopi in Concilio Oecumenico coadunati, qui, ut fidei et morum doctores et iudices, pro universa Ecclesia doctrinam de fide vel de moribus definitive tenendam declarant; aut quando per orbem dispersi, communionis nexum inter se et cum Petri successore servantes, una cum eodem Romano Pontifice authentice res fidei vel morum docentes, in unam sententiam tamquam definitive tenendam conveniunt.

§ 3. Infallibiliter definita nulla intellegitur doctrina, nisi id manifeste constiterit.

§ 1. In virtue of his office the Supreme Pontiff is infallible in his teaching when, as chief Shepherd and Teacher of all Christ's faithful, with the duty of strengthening his brethren in the faith, he proclaims by definitive act a teaching to be held concerning faith or morals.

§ 2. The College of Bishops also possesses infallibility in its teaching when the Bishops, gathered together in an Ecumenical Council, exercise the magisterium and, as teachers and judges of faith and morals, definitively declare for the universal Church a teaching to be held concerning faith and morals; likewise, when the Bishops, dispersed throughout the world but maintaining the bond of union among themselves and with the successor of Peter, together with the same Roman Pontiff authentically teach matters of faith or morals, and are agreed that a particular teaching is definitively to be held.

§ 3. No teaching is understood to be infallibly defined unless this is manifestly demonstrated.

SOURCES: § 1: *LG* 25
§ 2: *LG* 25
§ 3: c. 1323 § 3; *SCCong* Instr. *Inter ea*, 4 nov. 1969, 9 (*AAS* 62 [1970] 126–127)

CROSS REFERENCES: cc. 330–333, 336, 337, 341, 747 § 2

COMMENTARY

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1. *Living and infallible magisterium*

This canon begins the presentation of the normative principles and rules of procedure mandatory for those persons who exercise the living magisterium of the Church in their duties with regard to the authentic interpretation, illustration, defense, and application of the deposit of faith contained in the scriptures or handed down by tradition. It is clear that this norm concerning acts inherent in the living magisterium,[1] which is the very essence of the canonical discussion of the Church's magisterium, must always be stated in a form that is consistent with divine teaching on the *munus petrinum*, "your faith may not fail" and "strengthen your brothers" (cf. Lk 22:32), and must be consistent also with the mission to teach all peoples received by the bishops as successors of the apostles (*LG* 24).

The infallible magisterium, governed by c. 749, has a clear priority among the various kinds of living magisterium. Its special characteristic is the preservation from error through divine assistance which is given to the persons mentioned in this canon. Infallibility is therefore a charism of negative content—the exclusion of error—which makes infallible pronouncements immutable, since they are made with the assistance of the Holy Spirit and require no subsequent approval and are not subject to any appeal (cf. *LG* 25).

Even though the doctrine of infallible magisterium was defined at the First Vatican Council,[2] we do not find a direct norm in the *CIC*/1917 for acts of magisterium resulting in infallible pronouncements. Its current canonical treatment is the product of work done by the *coetus de Lege Ecclesiae fundamentali*,[3] which closely follows the Second Vatican Council (*LG* 25).

2. *Infallible act of the magisterium carried out by the Roman Pontiff*

In paragraph 1, canon 749 sets forth the criteria for recognizing an act of infallible magisterium by the Supreme Pontiff. First, it must be an act of the exercise of his office as chief shepherd and teacher of all the

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1. Cf. LEO XIII, Enc. *Satis cognitum*, June 20, 1896, in Dz.-Sch., 3305; PIUS XII, *Humani generis*, August 12, 1950, in Dz.-Sch., 3886; *DV*, 10.
2. Cf. Const. dogm. *Pastor aeternus*, c. IV, in Dz.-Sch., 3073.
3. Cf. *Comm.* 9 (1977), pp. 107–109.

faithful,[4] including the bishops, whom he, as head of the College of Bishops, is to "strengthen" in the faith (Lk 22:32) by carrying out his divine mission of establishing the unity of the Church on the "rock" (Mt 16:16) of his magisterial chair.

Further, in order for it to be clear that the Roman Pontiff intends to carry out an act of infallible magisterium, he must intend to proclaim, in a definitive act, the teaching that is to be followed. That is to say, he must intend to declare a doctrinal point by means of a definitive act of his magisterium. In other words, he must intend to define or dogmatically declare a certain teaching.[5] It is clearly not an act of infallible magisterium when the Roman Pontiff adopts an exhortatory manner or tries to awaken personal reflection in the faithful or when he is questioned or expresses his opinion as a private teacher while speaking to private groups, since in these cases he does not intend to define a teaching by exercising his supreme apostolic authority.

But in addition to the subjective requirements mentioned above, any act of infallible magisterium must also meet a necessary objective condition: the teaching being defined must have to do with faith and morals. This necessary condition comes from the divine order flowing from revelation: "Yet this Magisterium is not superior to the word of God, but is its servant. It teaches only what has been handed on to it" (*DV* 10). From this, it follows that "this infallibility, however, with which the Divine Redeemer wished to endow his Church in defining doctrine pertaining to faith and morals, is co-extensive with the deposit of divine revelation, which must be religiously guarded and loyally and courageously expounded" (*LG* 25). In short, infallible magisterium must be limited to the area of faith and morals, since this is where the truth of the revelation imparted from the lips of Christ culminates: "This Gospel was to be the source of all saving truth and moral discipline" (*DV* 7).

The Council of Trent had already used this strong expression in pointing out the divine design of maintaining the *puritas ipsa Evangelii* in the Church—backed by its promulgation from the lips of Christ and by the preaching of the apostles—as the source "omnis, et salutaris veritatis, et morum disciplinae." These two areas encompass the entirety of the revelation, which is always related to matters "tum ad fidem tum ad mores pertinentes."[6]

Thus since the Pope's infallible magisterium is at the service of revelation and the Gospel, the First Vatican Council met the objective requirement for an infallible magisterium of the Roman Pontiff with respect to

4. Cf. Const. dogm. *Pastor aeternus*, c. IV, in Dz.-Sch., 3073; *LG* 25.
5. Cf. *Comm.* 9 (1977), p. 107.
6. Sess. IV, May 8, 1546, *Decreto sobre las Escrituras canónicas.* Cf. T. LÓPEZ, "'Fides et mores' en Trento," in *Scripta Theologica* 5 (1973), pp. 175–221.

faith and morals,[7] just as the earlier magisterium defined the contents of the *depositum fidei* in these two areas.

To understand better that the *disciplina morum* can also be an area of infallible magisterium, it should be remembered that faith must necessarily be expressed in external works, because "faith, if it hath not works, is dead" (James 2:26), and "faith expresses itself through love" (Gal 5:6). The kingdom of heaven "is gained through the efficacy of faith, which is present when the works of faith are present. That is to say, the works of one who is truly faithful will give witness to his faith and show that he is truly faithful, imbued with great faith, perfect faith, faith in God, faith that glows with good works, so that the Father of all is glorified through Jesus Christ."[8] Another indication of the importance that the Church has always attached to the *fides et mores* as the very core of divine revelation is that Biblical exegesis, from the time of the Church fathers, has understood that the allegorical meaning of the Bible—the meaning of faith—and the tropological meaning of the Bible—the meaning related to the moral and practical requirements of faith—were necessary in order to arrive at the correct interpretation of the Scriptures.[9]

As far as the *disciplina morum* is concerned as an area of the Roman Pontiff's infallible magisterium, it must be remembered that the scope of morals is not exhausted in moral theology; morals also have to do with other aspects of Christian practice developed by Church law, liturgy, or ascetics, since the *veritas salutaris* has a fundamental influence on them.

In order to express better the impact of infallible magisterium on this broad area of Christian practice, the canon stresses that as an effect of this magisterium, the teaching expounded in it *tenenda est* rather than *credenda est,* as the canon read at one point when it was being drafted. It was later corrected expressly to emphasize the importance of infallible magisterium in practical matters, which is also in line with the manner in which this point was phrased by Vatican II (cf. *LG* 25).[10]

The inclusion of *mores* in infallible magisterium cannot ignore the fact that the principles of natural order arising from human nature are also related to morals. In this sense (see also the commentary on c. 747 § 2), the profound link between the order of creation and the order of redemption should be remembered, since, as St. Thomas says, "It is necessary for

7. Cf. Const. Dogm. *Pastor aeternus*, ch. IV, in Dz.-Sch., 3073; *VSP*, 4, 8, 26, 27, 28, 30, 84, 86, 88.
8. Cf. "Carta de San Clemente a las vírgenes," II, 2, in D. RUIZ BUENO, Padres Apostólicos (Madrid 1965), p. 268.
9. Cf. T. LÓPEZ, "'Fides et mores' en la literatura medieval," in *Scripta Theologica* 8 (1976), pp. 93–108.
10. Cf. *Comm.* 9 (1977), p. 107; G. MUCCI, "La competenza del Magisterio infallibile," in *La Civiltà Cattolica* 139 (1988), III, pp. 22–23.

God to give man some principles by virtue of which he is ordained to have supernatural happiness just as he is ordained by moral principles for his natural purpose, although not without divine help."[11] Moreover, revelation contains moral precepts that in themselves may be discovered by natural reason, but man's condition as a sinner makes it difficult for him to see them. Thus the teaching of Vatican II, far from excluding natural law from the area covered by infallible magisterium, confirms its inclusion by pointing out that the Church's infallibility extends to the entirety of the divine revelation (*LG* 25).

3. *Infallible act of the magisterium carried out by the College of Bishops*

Paragraph 2 of the canon regulates acts of infallible magisterium by the College of Bishops, whose infallibility, like the magisterium above,[12] is taught by Vatican II: "The infallibility promised to the Church is also present in the College of Bishops when, together with Peter's successor, they exercise the supreme teaching office" (*LG* 25). In essence, the scope of the magisterium is an extension of the full and supreme authority of the College of Bishops, headed by the Supreme Pontiff (*LG* 22; c. 336).

The College of Bishops, which exercises its authority over the universal Church in solemn form in an ecumenical council, can also formulate an infallible teaching in an ecumenical council (cf. c. 337). However, it would be an error to assume that any magisterium solemnly exercised in an ecumenical council is infallible; just as it is not possible to equate the entire spectrum of the Supreme Pontiff's magisterium with infallible magisterium, as we have just seen in § 1 of this canon. Neither would it be correct to equate a magisterium solemnly exercised at an ecumenical council with infallible magisterium. For its magisterium to be infallible, an ecumenical council must declare to the entire Church that a given teaching on faith and morals is to be considered definitive. Only then are the bishops, in unity with the Pope in the solemn form of an ecumenical council, acting as teachers and judges of faith and morals, whose definitive decision is not subject to later approval or any appeal. It is clear that such infallible decisions, for the reasons explained above, must have to do with matters related to faith and morals.

But the infallible magisterium of the College of Bishops, in agreement with its head, the Roman Pontiff, is not limited to solemn acts by an ecumenical council alone. Since there are other kinds of collegial acts (c. 341 § 2), the bishops "dispersed throughout the world but maintaining

11. *S. Th.*, I–II, q. 62, a. 1.
12. Cf. PIUS IX, Let. *Tuas libenter*, December 21, 1863, in Dz.-Sch., 2879; VATICAN COUNCIL I, Const. dogm. *Dei Filius*, ch. 3, in Dz.-Sch., 3011.

the bond of union among themselves and with the successor of Peter" (c. 749 § 2) may also exercise infallible magisterium.

This is a possibility that had already been raised by Vatican I when it taught that an ordinary, universal magisterium—as well as a solemn one—may expound all the truths contained in the scriptures and tradition[13] to be believed as divinely revealed and which must be believed in with divine, Catholic faith. This principle, which is repeated in the *CIC*/1917, c. 1323 § 1 (although it does not use the word "infallibility"), says that ordinary, universal magisteriums may expound truths to be believed in with divine, Catholic faith, which implies infallible magisterium. It might perhaps be argued that the ordinary, universal magisterium mentioned in these texts refers to a magisterium of the Roman Pontiff rather than a magisterium of the bishops in agreement with the Pontiff. However, an interpretation excluding the bishops from magisterium, as if they were not giving ordinary, universal magisteriums, is not acceptable. Pius IX himself used another, perhaps more expressive, way of explaining this point: obedience of an act of divine faith should not be limited to matters only defined in express decrees from ecumenical councils or Roman Pontiffs, but should also include matters that are taught, as having been divinely revealed, by the ordinary magisterium of the entire Church around the world, and thus are universally and consistently accepted and considered by Catholic theologians as relevant to the faith.[14]

The text of c. 749 § 2, reflecting Vatican II's doctrine on the infallible teaching of the bishops *per orbem dispersi* (*LG* 25) further clarifies the requirements for this method of expounding the infallible magisterium: the bishops must act by "maintaining the bond of union among themselves and with the successor of Peter, together with the same Roman Pontiff authentically teach ... and agree that a particular teaching is definitively to be held."

The point that turned out to be the most difficult to express in the work of codification is how this magisterium should maintain unity with the Roman Pontiff. The authors of the current c. 749 § 2, perhaps influenced by the current c. 341 § 2 on the requirement that the Roman Pontiff support or freely agree to any inherently collegial act, included this sentence: "In this latter case, consent with the bishops' teaching may be given in an official statement by the Roman Pontiff."[15]

This seemed like a good idea to some consultors, but to others it seemed unacceptable to reduce the Roman's Pontiff's role to that of a mere notary public that receives or declares whatever the bishops decide

13. Cf. Const. Dogm. *Dei Filius*, ch. 3, in Dz.-Sch., 3011.
14. Cf. PIUS IX, Let. *Tuas libenter*, cit.; P. PICOZZA, "El Magistero della Chiesa nel nuovo Codex (canoni 747–759)," in *Scritti in memoria di Pieto Gismondi*, II (Milan 1991), pp. 161–163.
15. Cf. *Comm.* 9 (1977), p. 108.

instead of requiring an explicit approval of the bishops' magisterium; some thought it would be better to let the Pope handle each case at his own free will; others made the point that if explicit approval is not required, the parallelism of the required approval of an ecumenical council would be lost.[16] The outcome of this debate was to insert the phrase "una cum eodem Romano Pontifice"[17] before the phrase "authentice res fidei vel morum docentes," which makes clear the required unity with the Pope that a bishops' magisterium claiming to proclaim a given teaching as definitive must have.

4. *Corroboration for the status of a teaching as infallible*

As paragraph 3 states, "no doctrine is understood to be infallibly defined unless this is manifestly demonstrated." This requirement is necessitated by the positive nature inherent to sources of divine revelation and acts of magisterium whose existence can sometimes be proved indirectly, but never supplanted. Those involved with the codification of the *CIC* stressed the usefulness of approval by the Roman Pontiff of the magisterium of the bishops *per orbem dispersi* to make clear *unanimitas in docendo* and thus the magisterium of the College of Bishops. Although canon law does not require this approval, it is clear that the phrase *una cum eodem Romano Pontifice* in § 2, in addition to expressing the necessary union with the head of the College of Bishops inherent in the *unanimitas in docendo*, contributes to facilitating the external corroboration inherent to any act of magisterium.

As a consequence of the specific value of infallible magisterium with respect to other *auctoritates* or theological reasons, dogmatic theology should clarify to the greatest extent possible the specific theological status of the various theses of dogma. With respect to the *ex cathedra* of the Roman Pontiff's magisterium, Vatican II says that sincere obedience should be given to his pronouncements "and sincere assent [should] be given to decisions made by him, conformably with his manifest mind and intention, which is made known principally either by the character of the documents in question, or by the frequency with which a certain teaching is proposed, or by the manner in which the teaching is formulated" (*LG* 25).

16. Cf. ibid., pp. 108–109.
17. Cf. ibid.

750 § 1. **Fide divina et catholica ea omnia credenda sunt quae verbo Dei scripto vel tradito, uno scilicet fidei deposito Ecclesiae commisso, continentur, et insimul ut divinitus revelata proponuntur sive ab Ecclesiae magisterio sollemni, sive ab eius magisterio ordinario et universali, quod quidem communi adhaesione christifidelium sub ductu sacri magisterii manifestatur tenentur igitur omnes quascumque devitare doctrinas iisdem contrarias.**

§ 2. **Firmiter etiam amplectenda ac retinenda sunt omnia et singula quae circa doctrinam de fide vel moribus ab Ecclesiae magisterio definitive proponuntur, scilicet quae ad idem fidei depositum sancte custodiendum et fideliter exponendum requiruntur; ideoque doctrinae Ecclesiae catholicae adversatur qui easdem propositiones definitive tenendas recusat.**

§ 1. Those things are to be believed by divine and catholic faith which are contained in the word of God as it has been written or handed down by tradition, that is, in the single deposit of faith entrusted to the Church, and which are at the same time proposed as divinely revealed either by the solemn magisterium of the Church, or by its ordinary and universal magisterium, which in fact is manifested by the common adherence of Christ's faithful under the guidance of the sacred magisterium. All are therefore bound to shun any contrary doctrines.

§ 2. Each and every thing set forth definitively by the Magisterium of the Church regarding teaching on faith and morals must be firmly accepted and held; namely those things required for the holy keeping and faithful exposition of the deposit of faith; therefore, anyone who rejects propositions which are to be held definitively sets himself against the teaching of the Catholic Church.

SOURCES: c. 1323 § 1; PIUS PP. XII, Ap. Const. *Munificentissimus Dominus*, 1 nov. 1950 (*AAS* 42 [1950] 753–771); *LG* 25; *DV* 5, 10; SCDF Let. *Cum Oecumenicum*, 24 iul. 1966 (*AAS* 58 [1966] 659–661); Syn. Bish. Decl., 28 oct. 1967; SCDF Decl., 24 iun. 1973, 2–5 (*AAS* 65 [1973] 398–404)

CROSS REFERENCES: cc. 204–206, 209–211, 215–218, 749, 752–754

COMMENTARY

Eloy Tejero

In its original promulgation, this canon referred only to the acts of magisterium that must be received with the *obsequium fidei divinae et catholicae*. John Paul II[1] decreed and established that a § 2 be introduced, which defines the duty of firmly accepting and retaining the truths that are considered the secondary object of the infallible magisterium. In this way, the lacuna of the original canon is bridged.

1. *The characteristic value of the truths of divine and catholic faith*

This value arises from the dual foundation indicated by each of these adjectives: from having been divinely revealed—contained in the scriptures or tradition—and from being taught under the magisterium for the purpose of being known as divinely revealed. The convergence of these two factors permeates the truths of this order with maximum certainty which is inherent in the truths of dogma that provide objective, but further perfectable, knowledge of divine truths.[2]

The magisterium of the Church exerts its authority to the maximum in definitions of dogma because of the Church's certainty of her grounding in the word of God in both scripture and tradition. She is aware that she is in full harmony with the single deposit of faith entrusted to her safeguarding, with the assistance of the Holy Spirit.

From the juridical point of view, proper to our treatment, it should be pointed out that dogmas, whose theological importance is so great that they give rise to dogmatic theology (a basic branch of theology), necessarily entail a formal resolution, a positive definition, a decree by a body of the Church corresponding to the solemn magisterium or to its ordinary or universal magisterium. This is to make absolutely clear the importance which, both in the canonical sphere as well as in the theological one, the power to decide possesses, a power that, in accordance with "the supremely wise arrangement of God" (*DV* 10), enjoys the supreme authority of the Church. A glance at Church history and dogma is sufficient to show that so often, in fact, the same bodies of universal jurisdiction have promulgated both dogmatic and disciplinary canons. From this one can thereby confirm the existence of one single body with the decision-making power over both faith and discipline.

1. CDF, MP *Ad tuendam fidem*, May 18, 1998, no. 5, in *AAS* 90 (1998), p. 459
2. Cf. E. DUBLANCHY, "Dogme," in *Dictionnaire de Théologie Catholique*, IV, 1, 1574–1650.

Any truth of the divine and catholic faith thus entails an exercise of the infallible power of the magisterium, which positively presents its decisions (as juridical provisions are also formulated) with stress, at times, on judgments correcting errors written by *iudices fidei*. At other times, this is done by addressing the positive contents taken from the *depositum fidei* which, once defined, become a true *regula fidei* or law of divine faith, promulgated as such by the Church, which contains a real obligation embodying a doctrinal aspect of the Gospel of Christ that therefore obligates a believer to give his *obsequium fidei divinae* in his acceptance of the embodiment of truth written by the infallible magisterium of the Church.

This embodiment of the truth *secundum revelationem* (*LG* 25) contained in dogmatic statements is the reason for their priority over other formulations of the magisterium or any other type of *auctoritates* or any other kind or theological reasons, and these dogmatic statements are also the basis of the *communio fidei* that is the Catholic Church. In addition, the power of truth always has to be conducive to unity.[3] Embodiments of statements of dogma have the unique power to bind believers to the universal and specific obligation to place one's intellect and will in full obedience to God who reveals it and to the magisterium that infallibly teaches it.

2. *The common adherence of the faithful to the truths of divine and Catholic faith*

The obligation that binds one to all truths of divine and catholic faith is so compelling, and the power inherent in the truth of dogma which draws all the faithful of the Church into unity is so strong that it "is manifested by the common adherence of Christ's faithful under the guidance of the sacred magisterium" (c. 750).

Such a synthetic manner of presenting Vatican II's doctrine on the *munus propheticum* of all the faithful and their *sensus fidei* (*LG* 12; *DV* 10)[4] has caused some writers to lament that the canon does not fully embody the Council's doctrine.[5] It should be remembered, however, that the need for synthesis in the texts of the code, regarding those formulated by Vatican II, is seen in many other canons that capture the most relevant

3. Cf. CDF, Instr. *Donum Veritatis*, May 24, no. 3: *AAS* 82 (1990), p. 1551,

4. Cf. J. SANCHO, *Infalibilidad del Pueblo de Dios. "Sensus fidei" e infalibilidad orgánica de la Iglesia en la Constitución "Lumen gentium" del Vaticano II* (Pamplona 1987).

5. Cf. E. CORECCO, "Aspetti della ricezione del Vaticano II nel Codice di Diritto Canonico," in *Il Vaticano II e la Chiesa* (Brescia 1985), pp. 353 and 358; W. AYMANS, "Begriff, Aufgabe und Träger des Lehramts," in *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), § 61, p. 540.

aspects within the canonical system and must always be interpreted in the light of the full texts of Vatican II.

The same approach was followed in inserting the reference to the "communis adhaesio christifidelium sub ductu sacri magisterii" in c. 750: these are references taken from *Lumen gentium* 12, which express very well the *communio fidei* that comes from full obedience of the intellect and will of the faithful who accept the truths of divine and catholic faith. It is clear then that the *universitas fidelium* cannot be deceived in their faith and that the holy people manifest their *munus propheticum* through a supernatural understanding of faith when they give their universal consent in matters related to faith and morals, as *Lumen gentium* 12, states.

It cannot be denied that the phrase *supernaturalis sensus fidei totius populi* has a more markedly active meaning than the phrase *communis adhaesio christifidelium.* This active dimension of the *sensus fidei* is widely seen in many canons of the *CIC*, especially in book III (which we cannot discuss now); but this is the time to point out the fundamental value inherent in infallible definitions "which must always have the *assensus Ecclesiae*" (*LG* 25), and which therefore enrich and direct every act of the *plebs sancta* and their shepherds, who are faithful to the sacred deposit of the word of God entrusted to the Church (*DV* 10). This active faith of the *sensus fidei* encourages all the faithful to contribute to the growth of the *perceptio fidei in Ecclesia*, "growth in insight into the realities and words that are being passed on." This comes about in various ways. It comes through the contemplation and study of believers who ponder these things in their hearts (cf. Luke 2:19 and 51). It comes from the intimate sense of spiritual realities which they experience (*DV* 8).

In a specific way, Christ performs His *munus propheticum* through the testimony of the life and power of the word inherent in the laity whom he forms into witnesses and teaches the meaning of faith and the grace of the word (cf. Acts 2:17–18; Rv 19:20) so that the power of the Gospel may shine forth in everyday family and social life. The laity are valid witnesses of the faith if they vigorously link their profession of faith with a faithful life. States of life that are sanctified with a special sacrament, such as family and married life, have great value with respect to this *munus* (cf. *LG* 35).[6]

The active dimension of the *sensus fidei* must not be confused with the function proper to the magisterium of the Church, which corresponds to the subjects dealt with in c. 749 insofar as infallibility specifically is concerned and to those mentioned in cc. 752–754 insofar as other ways of exercising the *sensus fidei* are concerned. It would therefore not be correct to call the *munus propheticum* of all the faithful in the exercise of the *sensus fidei* a *common magisterium,* nor would it be correct to call

6. Cf. E. PARADA, "La posición activa de los laicos en el ejercicio del 'munus docendi,'" in *Ius Canonicum* 27 (1987), pp. 99–118.

the *sensus fidei* exercised by the Pope and the bishops in union with him a *special magisterium.*[7] The term *doctrinal authority of the faithful*[8] would also be incorrect, because *auctoritas* connotes a public power that is not proper to the faithful, either in defining truths of the faith or in other areas of hierarchical action.

The *sensus fidei,* rather than being found in this line of canonical application, must be related to other basic aspects of the canonical status of the faithful and their calling to carry out the mission God has entrusted to His Church (c. 204). On this level, the bonds of the profession of faith are essential for the faithful to be in full communion with the Catholic Church (c. 205), and it is also a faithful life that bonds the catechumens to the Church (c. 206). Full acceptance of the truths of divine and catholic faith is also the foundation for the fundamental duties of the faithful, such as always staying in communion with the Church (c. 209), living a holy life, and helping the Church grow (c. 210). Acceptance is also the basis of the rights of the faithful, such as the right to work so that the divine message of salvation constantly reaches more and more people around the world (c. 211), the right to found and direct associations (c. 215), the right to promote and support apostolic action (c. 216), the right to a Christian education (c. 217), and the right to lawful freedom to research the sacred sciences (c. 218).

Even so, it must be admitted that the content of the final text of c. 750 is quite scant when it comes down to the unique obligation, of negative content, arising from acceptance of the truths of divine and catholic faith: "all are therefore bound to shun any contrary doctrine." Definitions of dogma, in their richness and power, affirm that "in order that the sacrificial offering of his or her faith should be perfect, the person who becomes a disciple of Christ has the right to receive the word of faith not in mutilated, falsified or diminished form but whole and entire, in all its rigor and vigor"[9] (*CT* 30). Further, in the dogmatic definitions we find objective statements of the contents of faith that make possible the juridical applicability of the just and consistent obligations that the faithful owe each other and which underlie the rules on the *munus docendi* in the Church.[10]

7. Cf. P. PICOZZA, "Il Magistero della Chiesa nel nuovo Codex (canoni 747–755)," in *Scritti in memoria di Pietro Gismondi,* II (Milan 1991), pp. 158–160.

8. Cf. G. MUCCI, "Infallibilità della Chiesa, Magistero e 'autorità dottrinali' dei fedeli," in *La Civiltà Cattolica* 139 (1988), pp. 431–442.

9. Cf. J.A. FUENTES, "The Active participant in Catechesis and their Dependence on the Magisterium," in *Studia canonica* 23 (1989), pp. 373–386.

10. Cf. C.J. ERRÁZURIZ M., "La dimensione giuridica del 'munus docendi' nella Chiesa," in *Ius Ecclesiae* 1 (1989), pp. 177–193; idem, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 23–39, 68–80.

3. *The doctrine of the faith and the morals on what is necessary to safeguard and expound the deposit of the faith proclaimed by definitive act*

Among the texts prepared in Vatican Council I, but not promulgated due to that council's closure, was canon 9 of the schema dated December 1, 1870. This canon condemned any person who stated "that the infallibility of the Church is limited only to what is contained in divine revelation and does not also extend to other truths that are necessarily required for the deposit of the revelation to be kept whole."[11] The reasoning behind the statement was provided: "Although the ecclesiastical magisterium deals properly and principally with the very word of God written and transmitted by Tradition, nevertheless, it is necessary for it to also be extended to everything that, if a pronouncment is not given, it is not possible to exercise the custody of the divine deposit."[12] As examples of this secondary scope of the infallible magisterium, the relator Kleutgen referred to different points defined in the Council of Trent which, in themselves, could not be said to be revealed. Moreover, some principles of natural law and of other human disciplines, and judgments of the Church concerning some extraordinary facts, are considered the proper object of this scope of the magisterium.[13]

It is evident that the drafters of *Lumen gentium* 25 were familiar with this doctrine not finally promulgated by Vatican Council I, because they stated, "and this infallibility with which the Divine Redeemer willed His Church to be endowed in defining doctrine of faith and morals, extends as far as the deposit of revelation extends, which must be religiously guarded and faithfully expounded." In fact, the doctrinal commission of Vatican Council II noted that "the object of the infallibility of the church, thus specified, has the same scope of the revealed deposit: and, therefore, is extended to everything and only what directly refers to the same revealed deposit, or to what is required for the same deposit to be guarded and faithfully expounded."[14] That is why the Declaration of the CDF, *Mysterium Ecclesiae,* 3, established, "According to Catholic doctrine, the infallibility of the Church's Magisterium extends not only to the deposit of faith but also to those matters without which that deposit cannot be rightly preserved and expounded."[15]

On the basis of these texts, F. Ocáriz concludes, "It is Catholic doctrine that infallibility also extends to those (moral) norms which are not revealed but whose teaching of is necessary in order adequately to

11. Coll. Lac., VII, 577
12. *Schema II de const. Ecclesiae* preparatory of Vatican Council I, MANSI 53, p. 313.
13. Cf. M. Mosconi, *Magistero autentico non infallibile e protezione penale* (Rome 1996).
14. *Acta synodalia,* III, 1, 221, p. 252, note 1.
15. *AAS* 65 (1973), pp. 400–401.

expound and define the revealed truth."[16] In this connection, no. 2035 of the *Catechism of the Catholic Church* "makes an important clarification regarding the extension of infallibility, affirming that, among the doctrinal matters not belonging to the deposit of faith but which, because of their close relationship with the deposit, can be infallibly taught, include moral doctrine, something which some theologians have denied. In so doing, [no. 2035] emphasizes the saving nature of the truths of the faith: 'The supreme degree of participation in the authority of Christ is ensured by the charism of *infallibility.* This infallibility extends as far as does the deposit of divine revelation; it also extends to all those elements of doctrine, including morals, without which the saving truths of the faith cannot be preserved, explained, or observed.'"[17]

Based on the foregoing, one easily understands why it is stated in section 2 of the *Formula of the profession of faith to be used in cases in which Law so provides*: "I also firmly accept and hold each and every thing definitively proposed by the Church concerning its teachings on faith and morals."[18] This important provision was missing from the 1983 code until John Paul II, "moved ... by this need ... to overcome this lacuna in the universal law," decided to include it in his *Motu proprio Ad tuendam fidem*[19] § 2 to c. 750.

The *Motu proprio Ad tuendam fidem* refers to section 2 of the *Profession of faith* as the motivation for § 2 of c. 750. It should be stressed, however, that the wording of the canon is autonomous and clearer. In fact, the economy of the language of section 2 of the *Profession of faith,* "definitively proposed by the Church concerning its teachings on faith and morals," led some commentators to conclude that there must be an implicit distinction therein between an assent of faith with respect to truths belonging to the deposit of faith and a definitive assent—not necessarily of faith—with respect to other truths taught infallibly.[20] But the definitive nature of acts of infallible teaching with respect to moral questions do ultimately go to the truths of faith. Thus, the phrase, "... namely those things required for the holy keeping and faithful exposition of the deposit of faith," contained in § 2 of c. 750, represents a welcome clarification. That is, it is a specification of a type of infallible magisterial acts by reason of their object: the guarding and faithful expounding of the deposit of the faith, according to the terminology that is maintained by the texts cited. Moreover, section 3 of *Motu proprio Ad tuendam fidem* acknowledges

16. F. OCÁRIZ, "La competenza del Magistero della Chiesa 'in moribus,'" in *"Humanae Vitae 20 anni dopo." Atti del II Congreso Internazionale de Teologia Morale (Roma 9–12 noviembre 1985)* (Milan 1989), p. 130.
17. A. HONTAÑÓN, *La doctrina acerca de la infalibilidad a partir de la declaración "Mysterium Ecclesiae,"* (Pamplona 1998), pp. 152–153.
18. *AAS* 81 (1989), p. 105.
19. May 18, 1998, no. 4.
20. Cf., e.g., A. HONTAÑÓN, *La doctrina...*, cit., p. 295.

this, by pointimg out that the adherence to truths "definitively proposed by the Church regarding teaching on faith and morals" [wording from section 2 of the *Profession of faith*, which the *Motu proprio* incorporates and expands upon in the code by its addition to c. 750] "is of utmost importance since it refers to truths that are necessarily connected to divine revelation. These truths, in the investigation of Catholic doctrine, illustrate the Divine Spirit's particular inspiration for the Church's deeper understanding of a truth concerning faith and morals, with which they are connected either for historical reasons or by a logical relationship."[21]

In connection with the specific object of this infallible teaching, the degree of commitment that the faithful must maintain with respect to these pronouncements is also expressed properly. In this sense, in the period of time between Vatican Council I and Vatican Council II, some writers maintained the consideration *de fide ecclesiastica*, because they were infallibly taught, but not revealed, truths; while one also speaks of *tenenda* doctrine, which must be admitted. The *Profession of faith* and § 2 of the canon under discussion are also expressed along the same lines, the texts of which, using the verbs *accept* and *hold*, differentiate the degree of this acceptance with respect to the *obsequium fidei divinae et catholicae* due to the teachings contained in the Word of God written or transmitted by tradition, that the Church presents to be believed as divinely revealed.

21. MP *Ad tuendam fidem*, 3.

751 Dicitur haeresis, pertinax, post receptum baptismum, alicuius veritatis fide divina et catholica credendae denegatio, aut de eadem pertinax dubitatio; apostasia, fidei christianae ex toto repudiatio; schisma, subiectionis Summo Pontifici aut communionis cum Ecclesiae membris eidem subditis detrectatio.

Heresy is the obstinate denial or doubt, after baptism, of a truth which must be believed by divine and catholic faith. Apostasy is the total repudiation of the Christian faith. Schism is the withdrawal of submission to the Supreme Pontiff or from communion with the members of the Church subject to him.

SOURCES: c. 1325 § 2

CROSS REFERENCES: cc. 194 § 1,1°, 196, 694 § 1,1°, 844, 1041, 1184, 1323, 1364

COMMENTARY

Eloy Tejero

1. Following the consideration of the truths of divine and Catholic faith made in the preceding canon, there is the treatment of heresy, apostasy, and schism, whose inherent seriousness also reveals the fundamental importance of the dogmas of faith and Catholic communion based on these dogmas.

From the very beginning of its efforts, the *coetus de Magisterio ecclesiastico*, which drafted this canon, set out to correct the subjective approach taken in c. 1325 of the *CIC*/1917. The *coetus* made direct reference to heretics, apostates, and schismatics by stating that "only those who commit heresy, apostasy and schism in bad faith are heretics, apostates and schismatics."[1]

This statement, which was made on other occasions during the work on codification,[2] was an effort to avoid any possible conflict with the positions taken by Vatican II on the Catholic Church and the communities separated from full communion with her, although a certain imperfect

1. Cf. *Comm.* 7 (1975), p. 150.
2. Cf. ibid. 15 (1983), p. 92.

communion may exist. These divisions differ considerably among themselves, mainly concerning the nature and seriousness of issues related to faith and Church structure (*UR* 3) and not only for reasons of origin, time, and place. In any case, Vatican II instituted a rule for individuals that is of the greatest importance in the canonical determination of situations we find today: "persons who are born now into such communities and are taught faith in Christ cannot be found guilty of the sin of separation" (*UR* 3). This is in line with what Saint Thomas wrote: "Persons who separate themselves from the unity of the Church by their own decision and understanding are schismatics."[3]

a) This canon, by avoiding statements on any particular personal situation, provides an objective definition of heresy, whose salient feature is a persistent repudiation or doubt of a truth of divine and Catholic faith, which is quite different from dissent with other magisterial statements that do not constitute statements of dogma.

Persistent doubt is also a possible factor indicating heresy, not only because of the confusion implied by a mental state which shows a lack of unity with God who reveals himself and with the Church that teaches his revelation, but also by the social harm caused by casting doubt on preaching, teaching, or discussion in areas covered by dogma of the faith.

In spite of the purpose that moved the authors of the Code to describe heresy as such, they were unable to avoid two subjective aspects of the definition: heresy presumes that the person doubting or repudiating truths of the divine and Catholic faith has been baptized and that the doubt or repudiation persists, that is to say, a person persisting in doubt or rejection of the truth in spite of warnings, admonitions or correction by those who have credibility in matters of the Church's faith.

b) Apostasy, which also involves the same subjective factors, is described as a complete abandonment of the Christian faith (not just of a given truth of dogma, which is the case with heresy), either explicitly in the form of a categorical statement or implicitly in the form of an openly public act implying abandonment of the faith by behavior that is radically in conflict with the Christian faith, such as approving and persistently siding with persons attacking the Church or the Pope.

c) Schism is a rupture of the juridical bond and charity that links the faithful to each other and to the Roman Pontiff, which occurs when one refuses to submit to the authority of the Pope as head of the universal Church or denies that one has religious communion with the members of the Church that are in union with the Pope.

2. The definitions of heresy, apostasy and schism given in this canon are fundamental with respect to the canonical punishment that may be

3. *S. Th.* II–II, q. 39, a. 1.

incurred by those who commit these crimes defined under c. 1364. These definitions are also the basis for denying funeral rites (c. 1184 § 1,1), for irregularity to receive sacred orders (c. 1041), for removal from ecclesiastical office (194 § 1,1), and for expulsion of members from religious institutes (c. 694 § 1,1). But persons who were apostates or schismatics or embraced heresy before the age of sixteen, even though they may have done so in a culpable manner, or who are in any of the situations described in c. 1323, do not incur a canonical penalty (see commentary, c 1364).

3. Rupture of the *communio fidei catholicae* because of the delicts described in this canon does not incapacitate persons committing them from receiving *sanctitas sacramentorum* or *integritas sacramentorum*, so long as corruption of the faith does not entail corruption in the proper form of the sacrament. Thus, c. 844 § 2 provides that in cases of need, the faithful may receive sacraments from non-Catholic ministers in whose Church these sacraments are valid. However, as far as the sacrament of penance is concerned, the teaching of St. Augustine must be remembered: he points out that outside the Catholic Church, where the *potestas clavium* does not exist, no one can be bound or unbound. Only those who are at peace with the Catholic Church are forgiven. Those who are not at peace with her remain bound.[4]

4. Cf. *De baptismo*, III, XXV, 32, ed. Petschening, in *CSEL*, LI, P. 260; E. TEJERO, "La 'sanctitas sacramenti' y su 'ficta receptio' en la doctrina de San Agustín," in *Anuario Jurídico y Económico Escurialense* 16 (1993), pp. 445–447.

752 **Non quidem fidei assensus, religiosum tamen intellectus et voluntatis obsequium praestandum est doctrinae, quam sive Summus Pontifex sive Collegium Episcoporum de fide vel de moribus enuntiant, cum magisterium authenticum exercent, etsi definitivo actu eandem proclamare non intendant christifideles ergo devitare curent quae cum eadem non congruant.**

While the assent of faith is not required, a religious submission of intellect and will is to be given to any doctrine which either the Supreme Pontiff or the College of Bishops, exercising their authentic magisterium, declare upon a matter of faith and morals, even though they do not intend to proclaim that doctrine by definitive act. Christ's faithful are therefore to ensure that they avoid whatever does not accord with that doctrine.

SOURCES: PIUS PP. XII, Enc. *Humani generis,* 12 aug. 1950 (*AAS* 42 [1950] 567–568); *LG* 25; VATICANUM II, *Notif., Quaesitum est,* 15 nov. 1965 (*AAS* 58 [1966] 836); SCDF Let., 24 iul. 1966 (*AAS* 58 [1966] 659–661); Syn. Bish. Decl., 28 oct. 1967, 2; *SCCong* Instr. *Inter ea,* 4 nov. 1969, 9 (*AAS* 62 [1970] 126–127); SCDF Decl., 24 jun. 1973, 2–5 (*AAS* 65 [1973] 398–404)

CROSS REFERENCES: cc. 218, 749, 750

COMMENTARY

Eloy Tejero

Although the *coetus de Magisterio ecclesiastico* drafted a text on the issue addressed in this canon,[1] it was not incorporated into the *CIC*. The text proposed by the *coetus de Lege Ecclesiae fundamentali*,[2] which is more nuanced, was used instead.

1. *Classification of acts of magisterium with formally negative wording*

The first comment that would seem to be necessary for a correct understanding of this canon is that both the intrinsic disposition of persons

1. Cf. c. 708 § 2 from the *Schema* of 1980, p. 170; "Relatio complectens synthesim animadversionum," in *Comm.* 15 (1983), pp. 90–91.
2. Cf. *Comm.* 9 (1977), p. 110.

receiving acts of magisterium as well as the acts of magisterium themselves mentioned in c. 752 are described in negative terms. This approach in phrasing the law (which is necessary in this case, as we shall see) does not imply or suggest an attitude of inattention or unawareness with respect to either divine assistance with the acts of magisterium mentioned in this canon or religious submission with which these acts are to be received.

Canon 752, like cc. 749–750, refers to the authentic universal magisterium of the Supreme Pontiff or College of Bishops. The difference is that c. 752 deals with magisterial acts the subject matter of which does not attempt to define a doctrine by means of a decisive infallible act. Magisterial acts of the Roman Pontiff that are made with no indication of being definitions of dogma are also called *non ex cathedra* magisterium (*LG* 25)[3] or non-infallible pontifical magisterium.[4] Along this same line of distinction, these acts of magisterium, as opposed to the acts of magisterium described in cc. 749–750, are also known as simply authentic magisterium, or magisterium that does not have the highest authority.[5]

The need to resort to classifications of these magisterial acts that are technically negative (non-infallible, non-definitive, non *ex cathedra*) is necessitated by the fact that there are no specific bodies or kinds of action that can be exclusively described as those of the universal magisterium, as discussed here, to differentiate them from statements of dogma that constitute infallible magisterium. In fact, the same bodies (the Roman Pontiff and the College of Bishops) impart both infallible magisterium and non-definitive magisterium. Further, no distinction can be drawn between these two types of magisterium by stating that a solemn act gives rise to an infallible magisterium, since many documents written by ecumenical councils do not claim to define doctrine dogmatically. On the contrary, an ordinary and universal magisterium exercised by the bishops, "dispersed throughout the world but maintaining the bond of union among themselves and with the successor of Peter" (c. 749 § 2) may be infallible (c. 750).

Further, the efficacy of a magisterial act alone to formulate a definitive, infallible teaching must not be confused with the fact that the same magisterial act, even though it may not expressly state that it is definitive dogma (such as an encyclical of the Roman Pontiff), may contain infallible doctrines originating from earlier definitive acts whose efficacy is not diminished because magisterial acts of lower authority recalls doctrines defined earlier.

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3. Cf. U. BETTI, "L'ossequio al Magisterio pontificio 'non ex cathedra' nel no. 25 della 'Lumen gentium,'" in *Antonianum* 62 (1987), pp. 423–461.

4. Cf. F.J. URRUTIA, "La réponse aux textes du magistère pontifical non infalible," in *L'Année Canonique* 31 (1988), pp. 95–115.

5. Cf. C.J. ERRÁZURIZ M., *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 126.

2. *Clarification of the response of the faithful using positive and negative terms*

If classifications of the magisterial acts being studied here cannot avoid using negative terms to distinguish them from infallible magisterium, the same thing arises in describing the attitude with which the intellect and will of the faithful are to receive teaching presented in a universal and non-infallible magisterium: the faithful are to accept it with *religiosum obsequium*, which is not exactly the same as the assent to the divine and Catholic faith with which the faithful, under c. 750, are to accept the infallible acts of magisterium described in c. 749.

In order to grasp the exact meaning of *obsequium religiosum*, which is the term used by Vatican II (*LG* 25) to describe how the faithful should receive teaching expressed in the acts of magisterium in question, it is necessary to appreciate both the similarity and differences between *obsequium religiosum* and *obsequium fidei*.

The Church, since St. Paul's teaching in 2 Cor 10:5–6, which describes the faithful's personal response to God who reveals Himself as "in captivitatem redigentes omnem intellectum in obsequium Christi," has found no better way to express the loving and submissive acceptance by the intellect to divine revelation and to the dogmas of the magisterium than to repeat the Apostle's words, i.e., by *plenum intellectum et voluntatis obsequium.*[6] By this reception, the obedience and submission of the intellect and will to revelation, "se totum libere Deo committit" (*DV* 5), and the body of the faithful glows brightly "per commune omnium obsequium erga Ecclesiae mysterium."[7]

Unlike *obsequium fidei*, *obsequium religiosum*, with which the faithful are to receive doctrine expounded in non-infallible authentic magisterium of universal scope, means that it "must be accepted reverently as supreme magisterium and the faithful must sincerely obey it in their intellect and will" (*LG* 25).

As can be seen, sincerely obeying with one's intellect and will does not imply "bringing every thought into captivity to the obedience of Christ" (2 Cor 10:5–6) as does *obsequium fidei*. Yet acceptance of this authentic, universal, and supreme magisterium as such requires obedient assent, i.e., a loving and submissive acceptance by one's intellect, will, and conduct, "with one's mind and will in accord" (*LG* 25) with a non-infallible act of magisterium. *Obsequium religiosum* "cannot be just external or a matter of discipline, but must be seen with logic and from the perspective of faith."[8] Doctrine expounded in these magisterial acts is not only consistent

6. VATICAN COUNCIL I, Const. dogm. *Dei Filius*, ch. 3, in Dz.-Sch., 3008.
7. Cf. PAUL VI, Ap. Exhort. *Paterna cum benevolentia*, December 8, 1974, in *AAS* 67 (1975), p. 14.
8. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 23, in *AAS* 82 (1990), p. 1560.

at all times with doctrine taught in dogma, but also, by virtue of divine assistance with which these magisterial acts always have an intimate relationship with the truth.[9] Therefore, the hallmark of religious assent is obedience.

Religious assent recognizes that the universal non-infallible magisterium exercises a divinely assisted function, that it protects the deposit of revelation by promoting and unifying its teaching and application to certain historical and cultural circumstances. The constant flux in circumstances ensures that the type of magisterium described here (unlike statements of dogma) cannot and should not avoid so many historical, local, and ephemeral references. This is the "original limitation"[10] of the non-infallible magisterium and at the same time its special usefulness, so that each Christian generation may find up-to-date guidelines to direct their apostolic acts in their own times and places.

In contrast to the obedient assent to be given this type of magisterium in submission and love, there have been a number of opinions over the last several decades that take the "original limitation" of this type of magisterium as grounds for an alleged right of the faithful to dissent from such a magisterium. By equating "original limitation" with an alleged possibility of "error," they claim that the faithful may dissent from it out of an alleged maturity acquired by better and surer ways. The model of protesting governmental authority taken from civil society would express the attitude of the faithful to this type of magisterium.[11]

This perversion of *obsequium religiosum* is not acceptable even for an attitude on the part of those who dedicate themselves to the sacred sciences whose just liberty to do research and express an expert opinion in their areas of expertise should still be duly submissive to the magisterium of the Church (c. 218). This type of magisterium is still open to possible definitive statements in the future and needs the special contributions of students of the religious sciences whose assessments, made in accordance with the principles and methods of each discipline, are awaited and invited by the magisterium itself, "received with an accepting mind and will" (*LG* 25; cf. *VSp* 109–113).

9. "L'ossequio al Magisterio pontificio...," cit., p. 450; C.J. ERRÁZURIZ M., "Il 'munus docendi Ecclesiae'...," cit., p. 136.

10. U. BETTI, "L'ossequio al Magisterio pontificio...," cit., p. 456.

11. Cf. CDF, Instr. *Donum veritatis*, cit., no. 33, p. 1564.

753 **Episcopi, qui sunt in communione cum Collegii capite et membris, sive singuli sive in conferentiis Episcoporum aut in conciliis particularibus congregati, licet infallibilitate in docendo non polleant, christifidelium suae curae commissorum authentici sunt fidei doctores et magistri; cui authentico magisterio suorum Episcoporum christifideles religioso animi obsequio adhaerere tenentur.**

Whether they teach individually, or in Bishops' Conferences, or gathered together in particular councils, Bishops in communion with the head and the members of the College, while not infallible in their teaching, are the authentic instructors and teachers of the faith for Christ's faithful entrusted to their care. Christ's faithful are bound to adhere, with a religious submission of mind, to this authentic magisterium of their Bishops.

SOURCES: c. 1326; PIUS PP. XII, Alloc., 31 may 1954 (*AAS* 46 [1954] 313–317); *LG* 25; SCDF Let., 24 iul. 1966 (*AAS* 58 [1966] 659–661); Syn. Bish. Decl., 28 oct. 1967

CROSS REFERENCES: cc. 375, 386, 445, 455, 749, 750, 752, 756, 763, 772

COMMENTARY

Eloy Tejero

Written by the *coetus de Lege Ecclesiae fundamentali*,[1] this canon has to do with the standing of the magisterium imparted by bishops to the faithful entrusted to their care and with the obligation of the faithful to accept this magisterium with religious obedience.

1. *The authentic magisterium of particular scope*

Here we are dealing with a magisterium of particular scope rather than the universal magisterium discussed in cc. 749–752. This is also an authentic magisterium, since "the bishops ... are authentic teachers, that is, teachers endowed with the authority of Christ, who preach the faith to the people entrusted to them, the faith which is destined to inform their thinking and direct their conduct" (*LG* 25; cf. *VSp* 114–117). However, this magisterium remains subordinate to the universal magisterium at all times.

1. Cf. *Comm.* 9 (1977), pp. 110–111.

The canon begins by making it clear that it refers to "the Bishops that are in communion with the Head and members of the College," since "this communion is necessary for its authenticity"[2] and is a sure guarantee that these magisterial acts are in line with "the obligation all the bishops have of fostering and safeguarding the unity of the faith and of upholding the discipline which is common to the whole Church" (*LG* 23, cf. c. 386 § 2).

Therefore, the particular authentic magisterium is always a teaching that is consistent with the Holy Father's magisterium, since only "the Bishops who teach in communion with the Roman Pontiff are to be revered by all as witnesses of divine and Catholic truth" (*LG* 25). The bishops and all the faithful entrusted to them are in a state of permanent obedience to the Pope's magisterium, and this obedience ensures "that the episcopate is unified and indivisible and that by virtue of this internal unity of the priests, the worldwide multitude of believers is maintained in the unity of faith and communion."[3]

In communion and unity with the universal magisterium, the bishops' authentic magisterium, in its particular scope, has an internal relationship with the truth. For this reason, the faithful entrusted to their care should accept it with religious assent (see commentary on c. 752), since the bishops are "teachers of doctrine" (c. 375), even though this magisterium is not in itself infallible.

2. *Forms of exercising this magisterium*

As regards ways in which this magisterium can be exercised, c. 753 states that bishops may teach individually as well as at bishops' conferences or in particular councils. When this canon was being drafted, there were many questions about whether bishops' conferences have a teaching mission, and at one time all mention of the conferences was deleted from this canon in response to many bishops' comments based on the *Schema de Lege Ecclesiae fundamentali*.[4] They were later reinstated among the types of magisterium exercised by bishops, together with particular councils, suggesting a certain parity between Conferences and councils that is not found in any other canon in the *CIC* or the texts of Vatican II. This has given rise to a difference of opinion on whether or not bishops' conferences are canonical subjects of an authentic magisterium of particular scope.

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2. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 19, in *AAS* 82 (1990), p. 1558; cf. c. 375 § 2.
3. VATICAN COUNCIL I, Const. dogm. *Pastor aeternus*, prologue, in Dz.-Sch., 3051.
4. Cf. *Comm.* 9 (1977), pp. 110–111; J. MANZANARES, *La autoridad doctrinal de las conferencias episcopales* (Salamanca 1988), pp. 306–307.

A review of these opinions indicates that the proponents of both arguments have frequently established an equality between the juridical nature of particular councils and that which is characteristic of the bishops' conferences.[5] Such contention is clearly contradicted by cc. 445 and 455 and Vatican II texts (cf. *LG* 22–23, 25; *CD* 36–38), which do not mention the bishops' conferences when referring to the authentic magisterium of the bishops, nor when they are specifying the modes of a "verus actus collegialis," nor when determining the organs that are competent to establish the norms that must be observed in the teaching of the truths of faith.

The Synod of Bishops of 1985 acknowledged the existing uncertainties and recommended that the status of bishops' conferences be studied, especially regarding the problem of their doctrinal authority. In view of all this, John Paul II decided "to set out the basic theological and juridical principles regarding Episcopal Conferences, and to offer the juridical synthesis indispensable for helping to establish a theologically well-grounded and juridically sound praxis for the Conferences."[6]

Given the specifically pastoral objectives which gave rise to bishops' conferences at the end of the nineteenth century, the *Motu proprio Apostolos suos* stresses the significant contribution that bishops' conferences have been making to the practice of collegial affection and the spirit of communion within the universal Church. However, always taking into account that "at the level of particular Churches grouped together by geographic areas (by countries, regions, etc.), the Bishops in charge do not exercise pastoral care jointly with collegial acts equal to those of the College of Bishops."[7] In keeping with these principles, the following *complementary norms regarding the bishops' conferences* are established:

"Art. 1.—In order that the doctrinal declarations of the Conference of Bishops ... may constitute authentic magisterium and be published in the name of the Conference itself, they must be unanimously approved by the Bishops who are members, or receive the *recognitio* of the Apostolic See if approved in plenary assembly by at least two thirds of the Bishops belonging to the Conference and having a deliberative vote.

"Art. 2.—No body of the Episcopal Conference, outside of the plenary assembly, has the power to carry out acts of authentic magisterium. The Episcopal Conference cannot grant such power to its Commissions or other bodies set up by it.

"Art. 3.—For statements of a different kind, different from those mentioned in article 2, the Doctrinal Commission of the Conference of Bishops must be authorized explicitly by the Permanent Council of the Conference.

5. MP *Apostolos suos*, May 21, 1998, no. 7, in *AAS* 90 (1998), p. 646.
6. Ibid., no. 10.
7. Ibid., no. 22.

"Art. 4.—The Episcopal Conferences are to review their statutes in order that they may be consistent with the clarifications and norms of the present document as well as the Code of Canon Law, and they should send them subsequently to the Apostolic See for *recognitio*, in accordance with canon 451 of the Code of Canon Law."

In order to correctly interpret the provisions of Art. 1, it should be borne in mind that the same document established in number 22: "Taking into account that the authentic magisterium of the Bishops, namely what they teach insofar as they are invested with the authority of Christ, must always be in communion with the Head of the College and its members, when the doctrinal declarations of Episcopal Conferences are approved unanimously, they may certainly be issued in the name of the Conferences themselves, and the faithful are obliged to adhere with a sense of religious respect to that authentic magisterium of their own Bishops. However, if this unanimity is lacking, a majority alone of the Bishops of a Conference cannot issue a declaration as authentic teaching of the Conference to which all the faithful of the territory would have to adhere, unless it obtains the *recognitio* of the Apostolic See, which will not give it if the majority requesting it is not substantial."[8]

Therefore, although the pontifical document adds that "the intervention of the Apostolic See is analogous to that required by the law in order for the Episcopal Conference to issue general decrees,"[9] they are always subject to the *recognitio* of the Holy See, while the magisterial declarations approved unanimously can be published as authentic magisterium without receiving said *recognitio*. In any event, for correct identification of the cause that produces the obligatory nature of these declarations, it should be taken into account that "the binding effect of the acts of the episcopal ministry jointly exercised within Conferences of Bishops and in communion with the Apostolic See derives from the fact that the latter has constituted the former and has entrusted to them, on the basis of the sacred power of the individual bishops, specific areas of competence."[10]

8. Ibid.
9. Ibid., no. 13.
10. Cf. PIUS IX, Let. *Tuas libenter*, December 21, 1863, in Dz.-Sch., 2879; PIUS XII, Enc. *Humani generis*, August 12, 1950, *AAS* 42 (1950), p. 567.

754 Omnes christifideles obligatione tenentur servandi constitutiones et decreta, quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione, quae edit Romanus Pontifex vel Collegium Episcoporum.

All Christ's faithful are obliged to observe the constitutions and decrees which lawful ecclesiastical authority issues for the purpose of proposing doctrine or of proscribing erroneous opinions; this holds particularly for those published by the Roman Pontiff or by the College of Bishops.

SOURCES: c. 1324; PIUS PP. XII, Enc. *Humani generis*, August 12, 1950 (*AAS* 42 [1950] 561–578); SCDF Let., July 24, 1966 (*AAS* 58 [1966] 659–661); Syn. Bish. Decl., October 28, 1967

CROSS REFERENCES: cc. 29–33, 341, 587, 598, 625, 631, 750, 752, 753

COMMENTARY

Eloy Tejero

The wording of the previous canons came directly from the work done by the *coetus de Lege Ecclesiae fundamentali.* Though inspired by c. 1324 *CIC*/1917, c. 754 comes from a proposal of the *coetus de Magisterio ecclesiastico* that was incorporated into the 1980 *Schema Codicis* (c. 708 § 3) with the same wording as that of the current c. 754. However, there is full consistency between this canon and cc. 750, 752, and 753, since the obligation of the faithful to accept and obey the truths of the divine and catholic faith as expressed by the Church's infallible magisterium or to accept the authentic non-infallible magisterium with religious submission is necessary because of the respective promulgation, by the Church's legitimate authority, of constitutions and decrees.

Therefore, the constitutions and decrees mentioned in this canon are specific acts of the *munus docendi*, acts of magisterium in which the Church's legitimate authority teaches the truth, authoritatively witnesses to and interprets the word of God, or refutes erroneous opinions. Thus the constitutions mentioned in this canon are not those mentioned in cc. 587, 598, 625, 631, and others, but rather Counciliar constitutions—dogmatic constitutions and pastoral constitutions—or pontifical constitutions containing doctrine.[1] The same must be said of the decrees mentioned here:

1. Cf. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 18, in *AAS* 82 (1990), p. 1558.

these are magisterial acts that should not be confused with the decrees mentioned in cc. 29–33. Decrees issued by Vatican II and other councils are clear examples. Diocesan bishops may also promulgate magisterial decrees, which are quite different from general decrees and executory general decrees.

As far as formulations of pontifical magisterium are concerned, it should be pointed out that there is a quite varied range of formulations: apostolic constitutions, encyclicals, apostolic exhortations—post-synodal and otherwise—and discourses. However, there is no need here to rank the types of the pope's magisterial acts based on these various kinds of documents. Other approaches must be taken to see the *mens et voluntas* of the Roman Pontiff, which is manifested "principally either by the character of the documents in question, or by the frequency with which a certain doctrine is proposed, or by the manner in which the doctrine is formulated" (*LG* 25).

The Roman Pontiff fulfills his universal mission with the assistance of the Roman Curia and, in a special way, with the assistance of the Congregation for the Doctrine of the Faith, which, in carrying out its duty to further and protect the doctrine of faith and morals, sponsors studies to deepen understanding of the faith; assists the bishops to carry out their duties as authentic teachers; makes efforts to ensure that faith and morals do not suffer from error by examining any questionable books and documents and properly refuting teachings that are erroneous and dangerous; and judges delicts against the faith and the most egregious delicts against morals and in the celebration of the sacraments (cf. *PB* 48–85).

The Congregation sends its major decisions to the Supreme Pontiff for approval (*PB* 18) and these decisions then become part of the pope's ordinary magisterium.[2] In this regard, it should be remembered that "in exercising his supreme, full and immediate authority over the universal Church, the Roman Pontiff makes use of the various dicasteries of the Roman Curia, which act in his name and by his authority for the good of the churches and in the service of the sacred pastors" (*CD* 9; cf. cc. 360 and 361).

2. Cf. Instr. *Ecclesia Catholica*, December 2, 1949, in *AAS* 42 (1950), pp. 142–147.

755 **§ 1. Totius Collegii Episcoporum et Sedis Apostolicae imprimis est fovere et dirigere motum oecumenicum apud catholicos, cuius finis est unitatis redintegratio inter universos christianos, ad quam promovendam Ecclesia ex voluntate Christi tenetur.**

§ 2. Episcoporum item est, et, ad normam iuris, Episcoporum conferentiarum, eandem unitatem promovere atque pro vamas practicas impertire, attentis praescriptis a suprema Ecclesiae auctoritate latis.

§ 1. It pertains especially to the entire College of Bishops and to the Apostolic See to foster and direct among Catholics the ecumenical movement, the purpose of which is the restoration of unity between all Christians which, by the will of Christ, the Church is bound to promote.

§ 2. It is a matter for the Bishops and, in accordance with the law, for Episcopal Conferences, to promote this same unity and, in line with the various needs and opportunities of the circumstances, to issue practical norms which accord with the provisions laid down by the supreme authority of the Church.

SOURCES: § 1: PIUS PP. XI, Enc. *Mortalium animos*, 6 Jan. 1928 (*AAS* 20 [1928] 5–16); *LG* 13–15; *OE* 24–30; *UR* 4, 8, 9; *AA* 13, 14; *AG* 15, 36; SCDF Let., 24 Jul. 1966, 10 (*AAS* 58 [1966] 661); DE/1967 I; Syn. Bish. *Convenientes ex universo*, 30 Nov 1971 (*AAS* 63 [1971] 938)
§ 2: SCHO Instr. *Ecclesia catholica*, 20 Dec. 1949 (*AAS* 42 [1950] 142–147); *UR* 4, 8, 9; SCDF Let., 24 Jul. 1966, 10 (*AAS* 58 [1966] 661); DE/1967 I, 2–7; DE/1967 II, 64–66; SPCU Instr. *En Mars*, 15 Aug. 1970; *DPMB* 48; SPCU Normae, 22 Feb. 1975

CROSS REFERENCES: cc. 383 § 3, 751, 825 § 2, 844

COMMENTARY

Eloy Tejero

1. *The ecumenical movement among Catholics*

Although Leo XIII had instituted the Pontifical Commission for the Reconciliation of Dissidents with the Church in 1895, it was Pius XII who,

convinced of the need to foster dialogue and regular contact with separated brethren, issued the first rules directing Catholic participation in this dialogue in accordance with true faith and doctrinal purity.[1] Nevertheless, it would be John XXIII, with the creation of the Secretariat for Promoting Christian Unity on June 5, 1960, who not only showed his benevolence toward those called by the name of Christian, but also laid down rules so that they could follow the work of Vatican II, which was already at the preparatory stage, and find a life leading to the unity for which Christ prayed to his Heavenly Father with such ardor.[2] As is well known, this Council, in addition to crafting the Church's official doctrine on ecumenism (*OE* and *UR*), requested the preparation of an ecumenical directive which was published in two parts in 1967 and 1970.[3]

During the pontificate of John Paul II, the *CIC* and the *CCEO* had provided a partly new disciplinary situation for the faithful of the Catholic Church with respect to ecumenism.[4] Also, the publication of the *Catechism of the Catholic Church* in 1992 took on an ecumenical dimension of basic doctrine for all the faithful of the Church. Along this same line of action, the Pontifical Council for Promoting Christian Unity, whose areas of competence were also determined by Pope John Paul II (cf. *PB* 135–138), recently published the *Directorium Oecumenicum noviter compositum* (DE/1993), which contains all the earlier norms on ecumenism and adapts these norms to today's situation. Therefore, this is a text that supersedes the preceding ecumenical directive by *ex integro* reorganizing guidelines and universal norms which ensure that the Catholic Church's ecumenical activities are in harmony with the unity of faith and discipline that unite Catholics with one another (cf. DE/1993, 6).

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1. Cf. mp *Superni Dei nutu*, June 5, 1960; G. THILS, *Historia doctrinal del movimiento ecuménico* (Madrid 1965); P. RODRÍGUEZ, "Ecumenismo I. Estudio histórico," in *Gran Enciclopedia Rialp*, VIII (Madrid 1987); pp. 269–278; R. AUBERT, *La Santa Sede y la unión de las Iglesias* (Barcelona 1959).

2. Cf. *Ad totam Ecclesiam*, May 14, 1967, *AAS* 59 (1967), pp. 574–592 and April 16, 1970, *AAS* 62 (1970), pp. 705–724; J. ARIAS, "Bases doctrinales para una configuración jurídica de los cristianos separados," in *Ius Canonicum* 8 (1968), pp. 29–120; J. SÁNCHEZ VAQUERO, *Directorio ecuménico*, I parte (Salamanca 1967), and II parte (Salamanca 1970).

3. Cf. A. JOOS, "Il movimento ecumenico e il nuovo codice di diritto canonico," in *Il nuovo codice di diritto canonico. Novità, motivazione e significato*, (Rome 1983), pp. 307–334; L. MARTÍNEZ SISTACH, "Contenidos ecuménicos del nuevo Código y su incidencia pastoral," in *Boletín informativo del Secretariado de la Comisión Episcopal de relaciones internacionales* 20 (1984), pp. 3–17.

4. Cf. *Comm.* 15 (1983), p. 92. Regarding the discussions conducted during the codification of the section on the Ministry of the Word, cf. *Comm.* 7 (1975), pp. 150–154; 9 (1977), pp. 260–261; 12 (1980), pp. 226–227; 15 (1983), pp. 92–98; 19 (1987), pp. 236–260; 20 (1988), pp. 124–126.

2. *Areas of ecumenical competence of the College of Bishops and the Holy See*

"The Eastern Catholic Churches have a special duty of fostering unity among all Eastern Churches, first of all through prayers, by the example of life, by the religious fidelity to the ancient traditions of the Eastern Churches, by mutual and better knowledge of each other, and by collaboration and brotherly respect in practice and spirit." (c. 903 *CCEO*).

The ecumenical areas of competence of the College of Bishops and the Holy See, which c. 755 § 1 only hints at with the verbs *fovere et dirigere*, are made more explicit in the new directive: it is incumbent upon the College of the Apostles and the Holy See, as institutes of highest authority, to determine the ways and means in which a response should be made to the demands of full communion: meeting and assessing the ecumenical experience of all particular churches; providing the resources necessary for universal communion and communion among all the particular churches that belong to and are working for this communion; and giving directives for guiding and channeling ecumenical activities in the Church. It is on this level that other churches and ecclesial communities desiring an ecumenical relationship with the Catholic Church can be directed. It is at this level that final decisions can be made relating to re-establishing communion (cf. DE/1993 29).

3. *Areas of competence of bishops' conferences and particular churches*

However, these areas of competence of the College of Bishops and the Apostolic See should not lead one to think that the particular churches or the bishops' conferences working for Christian unity do not have a role. As c. 755 § 2 states, the needs and requirements of the times for fostering unity may be perceived and met quite well within this particular scope: "The communion that exists among these churches and ecclesial Communities of a given region that share some of the same cultural and civic traditions and the same ecclesial heritage is manifest in these particular churches and their institutions, such as the Synods of the Eastern Churches and bishops' conferences" (DE/1993 28). "Through the particular Churches, the Catholic Church is present in many places and areas where there are other Churches and ecclesial communities. These areas have their own spiritual, ethnic, political and cultural peculiarities. These areas often coincide with the territory of a Synod of Eastern Catholic Churches or a Episcopal Conference" (DE/1993 37).

Particular churches should work to support and maintain the life and functioning of unity that has been emphasized by Vatican Council II (*UR* 4). So, the new directory determines the activities that should be

undertaken by each diocese's ecumenical delegate; the diocese's ecumenical commission or secretariat; the ecumenical commission of the synods of the Eastern Catholic Churches and the bishops' conferences; the ecumenical entities in other ecclesial contexts, such as supranational organizations and other forms of cooperation among bishops' conferences (cf. DE/1993 41–49).

Going far beyond c. 755, the new ecumenical directory consists of these five major parts: I. The search for Christian unity; II. The organization in the Catholic Church supporting Christian unity; III. Ecumenical formation in the Catholic Church; IV. The communion of spiritual life and activities among the baptized; and V. Ecumenical cooperation, dialogue, and shared testimony.

TITULUS I
De divini verbi ministerio

TITLE I
The Ministry of the Divine Word

INTRODUCTION

José A. Fuentes

1. *The various meanings of the term "ministry of the divine word" as used in the CIC.*

The canons in book III generally having to do with the Church's teaching office, particularly the magisterium, are followed by canons on various teaching methods. The "Ministry of the Word," which is one way of evangelizing—"fides ex auditu" (Rom 10:17)—is the first method discussed. Title I of book III (cc. 756–761) is devoted to this ministry.

In the arrangement of the norms of the Code, the ministry of the word is understood in a very broad sense that includes all kinds of Christian instruction in the word of God (cf. c. 761; *DV* 24). This is clear, since this title discusses certain acts of the magisterium; acts by persons officially and publicly working with the Church's hierarchy; and efforts to spread the word, which is basically on the general responsibility of a believer as such. These responsibilities of various persons in the Church in no way presume a dialectical relationship among duties or powers; rather, they are a consequence of the interdependence of mutual assistance related to one and the same truth.

The various terms used in the canons in this title to refer to the preservation and spread of the word are as follows: *ministry of the word*, *proclamation of the Gospel* (cc. 756ff) and *proclamation of the Christian doctrine* (c. 761). The term *ministry of the word* is sometimes used in a technical sense for the official work of spreading the word, an effort which in practice is basically effected by preaching and official catecheses. But at other times, this same term is used in a broad sense: thus, as we have just pointed out, the "ministry of the divine word" as used in this heading encompasses the general responsibility that all the faithful have for being witnesses to the proclamation of doctrine (c. 759) and the responsibility parents have for directly exercising catechetical action (c. 744 § 2).

Although the Code at times uses the term *ministry* for various evangelizing activities, it does not seem to clarify that it can be used to mean any apostolic activity of the faithful in general. In fact, when this term or the expression *ministry of the word* is used in current magisterial or canonical doctrine, we may assume in principle that it means acts done by the faithful in cooperation with the functions proper to the hierarchy (cf. cc. 230 and 759).

The meaning of the term *proclamation of the Gospel* will be explained below in discussing the varied participation of the faithful in the ministry of the word. As far as the third term is concerned, *proclamation of the Gospel*, as used in the Code, has the same meaning as *ministry of the word* in the broad sense (see commentary on c. 761).[1]

2. *Contents and systematics*

This title consists of introductory canons (756–761) that list the competencies of various persons with regard to the ministry of the word by distinguishing among the activity of bishops, priests, the religious, and the laity. Two chapters follow that contain canons defining these persons' roles in two forms of the ministry of the word that are particularly important: preaching (cc. 762–772) and catechesis (cc. 773–780).

The aspects of the ministry of the word that are regulated in these three parts are fundamental, with each particular law covering a broad area. The areas covered by this legislation are:

a) In the six introductory canons of this title (cc. 756–761), the various responsibilities of the faithful related to the ministry of the word may be categorized as follows: those held by the supreme authority, each bishop, and groups of bishops (c. 756); the right and duty of the clergy to proclaim the Gospel to the people entrusted to them (c. 757); the duty of the consecrated faithful in this area (c. 758); the right and duty of the faithful, especially the laity, to spread the divine word and to cooperate with the hierarchy in the ministry of the word according to their ability (c. 759); the purpose of the ministry of the word (c. 760); and finally, ways and means of proclaiming Christian doctrine (c. 761).

b) Chapter I ("Preaching the Word of God") sets forth the right of the faithful to receive the word and the duty of those involved in ministries to preach (c. 762). The various competencies of the faithful are then described: bishops have the right to preach (c. 763); priests and deacons have the faculty to preach (c. 764); limits on preaching are set for religious (c. 765); and the laity are authorized to preach under certain circum-

1. Regarding the fact that the ordained ministry cannot be replaced and the collaboration of the laity in the ministry cf. Instr. EdM.

stances (c. 766). The next canons discuss the main type of preaching, the homily (c. 767), and the contents and ways of preaching (cc. 768–770). The final canons of this chapter require diligence on the part of the pastors to ensure that preaching reaches all people (c. 771) and sets forth the preaching competencies of the bishops and bishops' conferences (c. 772).

c) Chapter II ("Catechetical Formation") regulates the following matters: the pastors' responsibility and the purpose of catechesis (c. 733); the right of the faithful to catechize (c. 774); the normative competence the Holy See, the diocesan bishops, and bishops' conferences have in preparing catechisms (c. 775), duties of parish priests (cc. 776–777); catechetical responsibility of consecrated faithful (c. 778); use of a variety of instruments in catechesis (c. 779); and responsibility of pastors in training catechists (c. 780).

This systematics differs notably from the systematics that appeared in the *CIC*/1917. Under the earlier norms, it is significant that this entire area was regulated in a section entitled, "The Church's Magisterium," where there was a title on "Preaching the Divine Word" that consisted of three chapters: catechetical instruction, sacred preaching (i.e., preaching *per se*), and sacred missions. This division has been superseded by one that is more consistent: preaching and catechesis are considered to be concrete forms of the ministry of the word. As far as norms on missions are concerned, the current code distinguishes between internal missions (c. 770), which are considered to be a form of preaching, and missions to non-Catholics in places where the usual hierarchy has not been set up. These latter missions are regulated by title II of this book rather than the title on the ministry of the word. There are many very different manifestations of the ministry of the word in such missions.

The central idea of the ministry of the word with respect to what we will call other forms of evangelization (if we follow the Code's systematics and the various titles on the teaching office: missions, Catholic education, public communications media) is that there is no true evangelization without the ministry of the word. The teaching office, as c. 747 § 1 states, covers safeguarding, deepening, and proclaiming revealed truth. It may be said that the authentic teaching function in mission activities, Catholic education, and public communications media requires the ministry of the word. This assumes that the area of application of this title's canons, particularly cc. 756–761, is the four titles of the book. Thus it may be said that the best place in the systematics for these first canons on the ministry of the word would be after the first two canons of book III, which have to do with the teaching office in general, and just before the canons on the magisterium, which begin with c. 749.

3. *Participation of the faithful in the ministry of the word: cc. 756–761*

The *various responsibilities* of persons related to the ministry of the word are categorized in the canons introducing this subject. This is done by setting forth the responsibility inherent in sacred ministries, i.e., the responsibility of the faithful as such and the responsibility of members of institutes of consecrated life. These categories are used to define the cooperation of all in the service of the word and to protect the hierarchical diversity of the Church. The first of these canons (c. 756) describes the ministry of those in authority, i.e., the Roman Pontiff and the bishops.

In order to differentiate the mission of those in authority in the Church or those working with authorities who are in sacred orders from the mission of those exercising a ministry by virtue of having been baptized, two different terms are used: "proclamation of the Gospel" and "witnesses of proclamation." In this way, their different responsibility for the ministry of the word is made clear.[2]

4. *Fundamental concepts governing Codal norms*

Two fundamental points stand out in the regulation of these matters and in determining pastors' duties very clearly in Vatican II documents: *a)* the obsolescence of the reductionist vision that limited the ministry of the word to the obligation of the faithful to receive it (now, without neglecting this aspect, greater importance is given to the *act of spreading the Gospel*); and *b)* following the principle we have just pointed out, there is a direct statement and defense of the *responsibility of all the faithful for this ministry of the word* (cf. *LG* 9–17 and 30–38; *GS* 40–45; *CD* 13–18, *AA*; *IM*).

a) It is the spirit of the Council that has guided the canons to sort out the various aspects and functions that are found in the word of truth that Christ gave his Church (receiving it, preserving it, deepening it, spreading it ...) and to categorize the different competencies, rights, and duties of the faithful related to spreading the Gospel, at the same time taking into account the status of various juridic persons in the Church (clerics, religious, laity). Since it is not possible to separate these functions properly, other aspects and functions thereof, as well as the function of spreading the word, are given below.[3]

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2. Regarding the teaching role from the point of view of constitutional law, it is imperative that one consult the monograph of C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991).

3. Cf. ibid., pp. 146–147.

b) The Code, unlike the *CIC*/1917 (which considers the whole ministry of the word to be an instrument of the magisterium), provides a truly broad vision. Responsibility for spreading the word of the Lord extends to everyone in the Church, although each of the faithful has various other ministries, depending on his or her vocation.

Thus the ministry of the word is for everyone, although not the same form of it is for everyone. But everyone is dependent on those who have magisterial responsibility and who proclaim the Gospel with authority as the successors of the Apostles (cf. *CD* 12; *AA* 1–2). In spite of the importance of this conciliar principle, the first canons of this title and the first canons of book III do not contain an explicit text on participation by all the faithful in the *munus propheticum* (although participation by lay believers is explicit in c. 759), nor is there a statement embodying the Council's teaching on the *sensus fidei* of the people of God (*LG* 12).[4] The norms that basically establish the right of the faithful to participate in the Church's mission of spreading the Gospel are found in a different part of the Code (cc. 204 § 1, 211, 216 and 225).

In its broad sense, therefore, the ministry of the word is not limited to the institutional work of the Church in the form of preaching and official catecheses. Thus the canons, by categorizing various aspects of the important juridical relationships that this work entails, consider other aspects that depend on personal actions by the faithful. The Church's teaching activity, which is the responsibility of all the faithful, should be considered public, official teaching that is well defined to protect hierarchical diversity.

All these norms are thus intended to protect the hierarchical diversity provided for in the *munus docendi* and the capacity that everyone has to cooperate, each in his or her own way, in the ministry of the word.

This is the thinking that is the basis of these canons. Finally, let us point out the most important innovations from the point of view of discipline. There are two changes from the former norms: the first is that the faculty to preach is considered conferred simultaneously with the sacrament of orders; and the second is that in certain circumstances the laity may be allowed to preach.

4. *Institutiones Iuris Canonici*, 2 (Turin 1931), p. 250; CDF, Instr. *Donum veritatis, sobre la vocación eclesial del teólogo*, May 24, 1990, no. 18, *AAS* 82 (1990), p. 1558.

CAPUT I
De verbi Dei prae dicatione

CHAPTER I
Preaching the Word of God

756 **§ 1. Quoad universam Ecclesiam munus Evangelii annuntiandi praecipue Romano Pontifici et Collegio Episcoporum commissum est.**

§ 2. Quoad Ecclesiam particularem sibi concreditam illud munus exercent singuli Episcopi, qui quidem totius ministerii verbi in eadem sunt moderatores; quandoque vero aliqui Episcopi coniunctim illud explent quoad diversas simul Ecclesias, ad normam iuris.

§ 1. The office of preaching the Gospel to the universal Church has been committed principally to the Roman Pontiff and to the College of Bishops.

§ 2. For the particular Churches entrusted to them, that office is exercised by the individual Bishops, who are the moderators of the entire ministry of the word in their Churches. Sometimes, however, in accordance with the law, a number of Bishops simultaneously carry out that office in respect of a number of different Churches.

SOURCES: § 1: c. 1327 § 1; PIUS PP. XII, Alloc., 31 May 1954 (*AAS* 46 [1954] 313–317); *LG* 23, 25; *CD* 3; *AG* 29; Syn. Bish. Decl., 28 oct. 1967; Syn. Bish. Decl., 22 Oct. 1969, III; PAULUS PP. VI, Exhort. Ap. *Quinque iam anni,* 8 Dec. 1970 (*AAS* 63 [1971] 97–107); *EN* 67; *PA*
§ 2: c. 1327 § 2; BENEDICTUS PP. XV, Enc. *Humani generis,* 15 Jun. 1917 (*AAS* 9 [1917] 305–317); *SCCong* Normae, 28 Jun. 1917, 1 (*AAS* 9 [1917] 328–334); *LG* 23; *CD* 3; PAULUS PP. VI, Exhort. Ap. *Quinque iam anni,* 8 Dec. 1970 (*AAS* 63 [1971] 97–107); Syn. Bish. Decl., 22 Oct. 1969, III; *DPMB* 55–61; *EN* 68

CROSS REFERENCES: § 1: cc. 330, 336, 391, 392 § 2, 749
§ 2: cc. 386, 445, 446, 455, 753

COMMENTARY

José A. Fuentes

1. *The supreme authority's supervision over the ministry of the word*

This first canon on the ministry of the word states the specific responsibility of the supreme authority with respect to the proclamation of the Gospel. It corresponds to c. 1327 *CIC*/1917, which defined the preaching responsibility of the Roman Pontiff and the bishops. In a very general statement, this canon sets forth their responsibility for *proclaiming the Gospel*, a term that includes preaching, catechesis, and any other way of spreading Christian teaching.

The Roman Pontiff exercises this responsibility with authority received from Christ, independent of any human authority. The canon points out that the College of Bishops, as well as the Roman Pontiff, also has this supreme authority. This reference to the College of Bishops is the most important change made in the canon. Vatican II teaches that "the task of announcing the Gospel in the whole world belongs to the body of pastors, to whom, as a group, Christ gave a general injunction and imposed a general obligation ... Consequently, the bishops, each for his own part, in so far as the due performance of their own duty permits, are obliged to enter into collaboration with one another and with Peter's successor, to whom, in a special way, the noble task of propagating the Christian name was entrusted" (*LG* 23).

In traditional discussions of the Roman Pontiff's responsibility for proclaiming the Gospel, mention was made that he can exercise this ministry through others. He does in fact exercise it through the vicars, the prefects apostolic, and the offices of the Roman Curia.[1] The Roman Pontiff, "as successor of Peter, ... has the ministry of 'confirming his brothers in the faith', instructing all believers in the essential content of vocation and mission in light of the Christian faith and membership in the Church. Therefore, not simply the words coming directly from him, but also those transmitted by the various departments of the Holy See call for a loving and receptive hearing by the lay faithful" (*CL* 61).

1. Cf. *PO*, 9; *LG*, 32; P. LOMBARDÍA, "Trato de los presbíteros con los laicos," in *Escritos de Derecho Canónico y Derecho Eclesiástico del Estado*, t. 4 (Pamplona 1991), pp. 163–169.

2. *Responsibility of each bishop and groupings of bishops*

The mission of the Roman Pontiff and College of Bishops is not only to proclaim the Gospel in general to the universal Church; it also involves direct responsibility to each of the faithful. This mission of the ecclesiastical authority, though by its nature exclusively supreme, is not, however, unique. According to the norm of law, in union with the supreme authority, each bishop in his diocese and groupings of bishops also teach.

Canon 756 § 2 points out that each bishop in his particular church, in submission to the supreme authority, exercises the mission of proclaiming the Gospel. Each bishop, subject only to the supreme authority, has the basic duty to proclaim the Gospel to the people who have been entrusted to him (*LG* 25; *CD* 12–14). At the same time, each bishop has the right and duty to supervise any other evangelizing efforts in the particular church. As the canon phrases it, bishops exercise this function as *moderators* of the entire ministry of the word. This means that in the manifold activities of the faithful, including efforts that are not directly subject to the governing authority of a bishop, bishops should assist and encourage these various initiatives, while at the same time ensuring that these initiatives are in fact guided by a Catholic spirit. The term *moderators* illustrates that Christ did not institute the office of bishop so that bishops alone should exercise the Church's saving mission (cf. *LG* 30). Hierarchical tasks are to facilitate, not hinder, the varying and responsible works of the faithful that are themselves necessary for evangelization.

It is also pointed out that each bishop may exercise this pastoral function jointly with other bishops so that several particular churches may thus be directed jointly. This ministry, which has been shaped largely by bishops' conferences over the last few decades, is to be exercised subject to and within the channels set up by the supreme authority. A secondary aspect of this work, which does not in any way diminish the authority of each bishop over the people of God entrusted to him, is made clear in the canon by the words "at times" and "according to the norms of law." A bishop's work, incumbent upon him in his particular church by divine law, is different from the work incumbent upon him in groupings of bishops that are determined and limited by ecclesiastical law.

757 **Presbyterorum, qui quidem Episcoporum cooperatores sunt, proprium est Evangelium Dei annuntiare; praesertim hoc officio tenentur, quoad populum sibi commissum, parochi aliique quibus cura animarum concreditur; diaconorum etiam est in ministerio verbi populo Dei, in communione cum Episcopo eiusque presbyterio, inservire.**

It belongs to priests, as cooperators with the Bishops, to proclaim the Gospel of God. For the people entrusted to their care, this task rests especially on parish priests, and on other priests entrusted with the care of souls. Deacons also are to serve the people of God in the ministry of the word, in union with the Bishop and his presbyterium.

SOURCES: c. 1327 § 2; *SCCong* Normae, 28 Jun. 1917, 1 (*AAS* 9 [1917] 328–334); *LG* 28, 29; *CD* 30; *PO* 4; Syn. Bish. Decl., 30 Nov. 1971, II/I 1 (*AAS* 63 [1971] 898–922); *SDO* 22, 6°, *DPMB* 62; *EN* 68; *PA*

CROSS REFERENCES: cc. 528 § 1, 764, 835 §§ 2–3

COMMENTARY

José A. Fuentes

Sacred ministers have the right and duty to cooperate in the proclamation of the Gospel

The proclamation of the Gospel is a *right of the priests* (*"presbyterorum... proprium est"*). Priestly ordination is received in order to minister the means of salvation (cf. *PO* 4), i.e., upon ordination priests are given the ministry of the word, which is understood as the official, public proclamation of the word of God. This right must be exercised in cooperation with the bishops (cf. *PO* 7) and in accordance with the just limits set by authority.

Since this is a right, it cannot be understood as a concession by bishops, a special mission when necessary, or the delegation of authority to enable priests to proclaim the Gospel. The wording of the canon presumes this mission is conferred upon ordination, which of course must be exercised within the necessary subordination of each priest to an ordinary and the laws of the Church. The priests' general mission by virtue of their ordination is determined by a specific mission in which ordinaries assign certain work or pastoral care of a group of the faithful to the sacred ministers.

In addition to this right, priests also have the *duty* to evangelize the faithful. This is a duty which, by virtue of the offices they can assume, is clearly and juridically defined. This canon mentions parish priests, since this is largely the office where ordinary pastoral care is organized. Parish priests and priests holding any other pastoral offices in general are to organize and develop a series of ministerial activities and at the same time make every effort to involve the faithful and encourage their initiatives (cf. c. 528 § 1).

The priests' ministry of evangelization may be characterized as encouraging unity in diversity and reconciling different attitudes and charisms so that no one feels left out of the community. In order to do this and to achieve solidarity between the pastors and the faithful, priests use two fundamental means: by defending the common good on behalf of the bishop and by clearly proclaiming the truth.[1] Priests are to put aside their own opinions and judgments and encourage diversity among the faithful and proclaim the one true word to attain bonds of communion with the bishop and the universal Church.

Deacons, who are also mentioned as having the ministry of the word, are ordained to work with priests and bishops. Their responsibilities, rights, and duties, which are also grounded on the ministry they have received, are not equivalent to those of priests. Their ministries include reading the sacred scriptures and instructing and encouraging the faithful (cf. *LG* 29).

All the sacred ministers should proclaim the Gospel and, as set forth later in the canons (cf. c. 764), all of them have the authority to preach. This has led some to say that they participate in the Church's magisterium, but it would seem more correct not to use the term *magisterium* or even the term *magisterial function*, except for those mentioned in *Lumen gentium* 25, that is to say, for those who exercise functions equivalent to those of the office of bishop.[2]

1. Cf. C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 210.
2. Cf. J. HERRANZ, *Studi sulla nuova legislazione della Chiesa* (Milan 1990), pp. 247–257.

758 **Sodales institutorum vitae consecratae, vi propriae Deo consecrationis, peculiari modo Evangelii testimonium reddunt, iidemque in Evangelio annuntiando ab Episcopo in auxilium convenienter assumuntur.**

By reason of their consecration to God, members of institutes of consecrated life bear particular witness to the Gospel, and so are fittingly called upon by the Bishop to help in proclaiming the Gospel.

SOURCES: c. 1327 § 2; *SCCong* Normae, 28 Jun. 1917, 1 (*AAS* 9 [1917] 328–334); *LG* 44; *CD* 33; *PC* 8–11; *DPMB* 62; *EN* 69; *MR* 4; *PA* passim

CROSS REFERENCES: cc. 573, 578, 662, 666, 673, 674, 678, 680, 682, 715, 738, 778

COMMENTARY

José A. Fuentes

Particular responsibility of the consecrated faithful to witness to the Gospel

Members of institutes of consecrated life witness to the Gospel and cooperate with the Church's hierarchy, according to their own charism. Their apostolate consists primarily of the testimony of their consecrated life (c. 673). Thus they exercise the ministry of the word in a peculiar way. It should be noted that beginning with c. 758, persons who *proclaim the Gospel* are no longer mentioned. Instead, the Code uses the term *witnesses of proclamation.* This latter term is used in this canon when speaking of members of the institutes of consecrated life and in c. 759 when speaking of the work of the faithful as such. This latter term indicates that their relationship with the word is radically different from the relationship the sacred ministers have.

The work of those who live out their lives in a consecrated Christian vocation depends on their charism. The Church needs this "particular" witness of consecration (which is common to all the institutes of consecrated life), and it also needs the special contribution made by the spirituality and the commitments of each institution. "The status of the profession of the evangelical counselors, although not part of the hierarchy of the Church, is nevertheless undeniably a part of their lives and holiness" (*LG* 44).

In asking for the assistance of members of institutes of consecrated life, bishops are limited by their exemption (cf. c. 591; *LG* 45), commitments, and obedience owed by these faithful to their superiors and their proper law. This same limit on the bishops' authority is seen in the recognition of the inherent value in the Church of the particular charisms and their respective branches of law (cf. *MR* 4, 10–14). In determining a relationship that exceeds what a bishop can order any of the faithful to do, an agreement must always be made between the bishop and the moderator of the institute to determine exactly the appropriate permissions and mandates.

759 **Christifideles laici, vi baptismatis et confirmationis, verbo et vitae christianae exemplo evangelici nuntii sunt testes; vocari etiam possunt ut in exercitio ministerii verbi cum Episcopo et presbyteris cooperentur.**

The lay members of Christ's faithful, by reason of their baptism and confirmation, are witness to the good news of the Gospel, by their words and by the example of their christian life. They can also be called upon to cooperate with Bishops and priests in the exercise of the ministry of the word.

SOURCES: c. 1327 §2; PIUS PP. XII, Alloc., 31 May 1954 (*AAS* 46 [1954] 316–317); *LG* 33, 35; *AA* passim; *AG* 41; *DPMB* 62; *EN* 70–73; *PA* 7

CROSS REFERENCES: cc. 211, 216, 225, 228–230, 766, 776

COMMENTARY

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1. *Responsibility of the faithful as such for the proclamation of the Gospel.*

Responsibility of the laity

This canon, even with direct reference to the laity, indicates the *right of the faithful to evangelize* and their competence to be called to cooperate in the work of the hierarchy. In order to spread the word, the *faithful* do not need any kind of special training by the hierarchy or a necessary mandate for a mission, authorization, or permission (cf. cc. 211 and 225). But if the hierarchy wants one of the faithful to take part in activity which is reserved or other work that may not be so reserved, but for which the authority wishes them to assume a special responsibility, a special hierarchical mandate is necessary so that the faithful, insofar as a given work is concerned, will be under the direction of the Church's authority (cf. *AA* 24).[1]

In order to understand more fully what is said of the laity, certain trends that have negatively affected the apostolic responsibility of the lay faithful and that have brought warnings from Church authorities must be

1. Cf. *CIC*/1917, cc. 1328 and 1337; c. 10 of the *Schema de munere docendi (1977)*; and in *Schema LEF*, c. 64 (65): *Comm.* 13 (1981), pp. 68–69.

mentioned. Thus, John Paul II pointed out that "in particular, two temptations can be cited which they have not always known how to avoid: the temptation of being so strongly interested in church services and tasks that some fail to become actively engaged in their responsibilities in the professional, social, cultural, and political world; and the temptation of legitimizing the unwarranted separation of faith from life, that is, a separation of the Gospel's acceptance from the actual living of the Gospel in various situations in the world" (*CL* 2). For the laity, "the unique character of their vocation ... is in a special way to 'seek the kingdom of God by engaging in temporal affairs and ordering them according to the plan of God.' (*LG* 31)" (*CL* 9). This is why the Code, by illustrating in this canon the importance of this cooperative work with the public work of the Church, clearly states the importance of the laity's own special mission: to transform the world "with their own word and the example of their Christian life." In no way can cooperative ministries with the hierarchy be considered the principal model of the laity's mission in the world and the Church.

If a faithful on occasion teaches doctrine at his own direct personal responsibility and on other occasions does so in cooperation with the hierarchy, doing so as one's own responsibility does not imply that there is no relationship with the magisterium. There would be no true evangelizing work if a faithful, in his personal or joint efforts, were not in union with the magisterium. As Paul VI pointed out, "no evangelizer is the absolute master of his evangelizing action, with a discretionary power to carry it out in accordance with individualistic criteria and perspectives; he acts in communion with the Church and her pastors" (*EN* 60).

2. *The faithful may be called to cooperate with the hierarchical ministry*

The faithful, in addition to doing evangelizing work on their own responsibility, also have a fundamental competence to be called to help in the institutional Church's efforts to spread the word of God. The faithful may be called and enrolled by the institutional Church without thereby becoming part of the hierarchy (cf. Instr. EdM).

The difference between an autonomous apostolate of the faithful and an apostolate of the institutional Church (which until recently was called a "hierarchical apostolate" because the work was usually done by pastors) is clear in *Lumen gentium* 33. This conciliar text, having mentioned the participation of the faithful in the Church's apostolic mission by virtue of their baptism and confirmation, goes on to say that "the laity may be called in various ways to become more closely involved in the hierarchy's apostolate."

Participation by the faithful in the institutional Church's work has basically been determined through the *missio canonico*[2] in both the *CIC*/1917 and the latest Code. This canonical mission is conferred under the same hierarchical act as that under which a hierarchical ministry or a given call to cooperate is received. Thus, for example, there used to be a requirement for a *missio* in order to preach,[3] but no reference whatever appears in the final text. The canons do not expressly mention canonical mission, since regardless of how preaching and other specific work is regulated, the faithful do not have to have a *missio* or a mandate to exercise the ministry of the word, when understood in a broad sense.

It should be acknowledged, however, that certain ministries, given their special nature, may only be done under a peculiar relationship with authority. In such cases, a mission, a mandate, or a license is needed. These terms are not synonymous and entail different relationships between the faithful and authority (in the teaching area, specific important examples are given in cc. 766 and 812). Canon 759 synthesizes this relationship of the faithful, and specifically of the laity, with the hierarchy by using a term that has a very broad meaning. It says they may be "called to cooperate," not specifying the meaning any further. A case-by-case determination is to be made whether it is a matter of a simple license, a call, a mandate, or a specific canonical mission.

The faithful thus assume such responsibilities through various specific channels of dependence. For example, for preaching, which is specifically judged to be related to the function of the hierarchy, priests and deacons are *ipso iure* acknowledged to have the mission of preaching. In the case of the laity, c. 766, without stating that a mission is needed in a strict sense, does require approval of the authority of the Church.

The fact that the faithful need hierarchical approval for these cooperative functions (since baptism alone is not sufficient) results in a juridical consequence of particular interest. This requirement presumes it is not possible to speak of the faithful's rights with respect to these functions, and if no rights exist, we should acknowledge a *general capacity* or ability to be called by the hierarchy.[4] This is why the faithful cannot demand to have a part in the responsibility of "teaching officially," which is a ministry of the hierarchy, nor may they claim the right to be authentic interpreters of the word or to preach in public.[5]

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2. Cf. *Schema LEF*, c. 64 (65): *Comm.* 13 (1981), pp. 68–69.
3. Cf. G. DALLA TORRE, "La collaborazione dei laici alle funzioni sacerdotale, profetica e regale dei ministri sacri," *Monitor Ecclesiasticus* 109 (1984), p. 164; C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 208.
4. Cf. C.J. ERRÁZURIZ M., *Il "munus docendi...,"* cit., pp. 209–210.
5. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia* (Pamplona 1988), pp. 100, 117–119.

3. *Duty of the faithful to spread the divine word*

In addition to the right of the faithful to be witnesses to the proclamation and their general capacity to be called by the hierarchy for cooperative tasks, it should be recognized that the faithful have the *duty to spread the word.* This duty is nothing more than one of the manifestations of the generic duty to be involved in an apostolate, and this is a *moral duty,* which is not to say that it has no juridical relevance. This relevance is thus reflected in many canons that have to do with pastors' duties to train and support the faithful, and it is also reflected in other canons having to do with the right to the apostolate which is implied in a mission that comes from receiving baptism (rather than the hierarchy) and which must be respected, promoted, and encouraged.[6]

6. Cf. C. SOLER, "Los contenidos del ministerio de la Palabra," in *La misión docente de la Iglesia* (Salamanca 1992), pp. 81–85.

760 In ministerio verbi, quod sacra Scriptura, Traditione, liturgia, magisterio vitaque Ecclesiae innitatur oportet, Christi mysterium integre ac fideliter proponatur.

The mystery of Christ is to be faithfully and fully presented in the ministry of the word, which must be founded upon sacred Scripture, Tradition, liturgy and the magisterium and life of the Church.

SOURCES: BENEDICTUS PP. XV, Enc. *Humani generis*, 15 Jun. 1917 (*AAS* 9 [1917] 305–317); *EcS* III; *GCD* 38; Syn. Bish. Decl., 30 Nov. 1971, II/I 1c (*AAS* 63 [1971] 898–922); *EN* 25–39; *RH* 19; *CT* 6, 21, 30

CROSS REFERENCES: cc. 212 § 1, 749–754, 768, 779

COMMENTARY

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Purpose of the ministry of the word

Within the series of general canons on the ministry of the word (cc. 756–761), following the appropriate determinations of who has responsibility for evangelizing, c. 760 synthesizes the fundamental aspects of this ministry by defining its purpose and giving its foundations. These aspects, although directly defined here in the context of the ministry of the word, should be considered fundamental aspects of the Church's entire teaching office.

First, some of the *fundamental characteristics* of the word of God are given in terms of the purpose of a ministry that gives rise to a multitude of juridical relationships. These characteristics of the word of God, which no one can claim to own but of which all of us in the Church are servants, are its authenticity, unity, and integrity. If anyone tried to transmit a word contrary to these characteristics, he or she would harm the faithful; he or she would not be entitled to any rights based on this false word; and he or she would find him or herself in one of the situations of withdrawal from faith described in c. 751.

From the juridical point of view, the fundamental characteristic is that the word, which is of God, was given to be passed on. The word, that is, revelation, is a gift of God to all people. The *right to the word* exists precisely because it is a gift: not a right before God, but a right before men, those specifically who are obligated to pass on faithfully what has been given to everyone. The right, or rather rights related to the word, as

well as corresponding duties, depend on a specific bond: communion with the Church. The Church is where certain rights and duties arise that take quite varied forms, depending on the specific functions and different responsibilities the faithful have with respect to the word. The different functions related to the teaching office presume different passive situations related to the *ius ad verbum.*[1] One specific function of transcending importance that creates particular juridical relationships and particular rights is the function performed by the ministers of the word in the public forum.

The Church's authority has repeatedly pointed out that the full and faithful explanation of the faith is a duty whose counterpart is the right of the faithful to receive it in the fullness of truth.[2] "We should all be aware," says John Paul II, "of the 'right' every baptized person has to be taught, educated and raised in the faith and Christian life" (*CL* 61); "Anyone who becomes a disciple of Christ has a right to receive the word of faith (Rom 10:8), not in a mutilated, falsified or diminished form, but the full and complete word, in all its rigor and vigor" (*CT* 30).

The *purpose* of the ministry of the word is the same as that of the teaching office. References to this purpose appear not only in c. 760, but also in other canons of book III. It may be expressed in various terms, but they turn out to mean the same thing. Some are more generic: this is the case when the purpose is given as the proclamation of the "deposit of faith" or "the Gospel" (cc. 747 § 1, 781); and others indicate that it is to pass on "doctrine" or "the evangelical message" (cc. 785 § 1, 787 § 1). At various times one sees a concern for passing on a doctrine that is also life (cf. cc. 759, 767 § 1, 768 § 1, 773, 774). Canon 760, saying that the purpose is none other than the "mystery of Christ," illustrates that these other canons (some more directly concerned with doctrine, some with life, and others with morals) have a specific vital core: the person of Christ.[3] The purpose of the ministry of the word, therefore, is none other than "offering people Christ's message and grace," aiming at the same time to "suffuse and perfect the whole temporal order with the evangelical spirit" (*AA* 5; cf. *EN* 26–34). What is being passed on is not merely a set of abstract truths, but the truth incarnate: Christ (cf. *RM* 44).[4]

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1. Cf. PAUL VI, Ap. Exhort. *Paterna cum benevolentia*, December 8, 1974, in *AAS* 67 (1975), p. 5; JOHN PAUL I, *Alocución a los Obispos de Filipinas en visita ad limina*, September 28, 1978, in *AAS* 70 (1978), p. 768; JOHN PAUL II, *Discurso a la Universidad Católica de América*, Washington, October 7, 1979, in *Insegnamenti di Giovanni Paolo II*, II/2 (Vatican City 1980), p. 690; CDF, *Carta al P. E. Schillebeeckx*, June 13, 1984, in *AAS* 77 (1985), p. 997.
2. Cf. C. SOLER, "Los contenidos del ministerio de la Palabra," in *La misión docente de la Iglesi* (Salamanca 1992), pp. 96–97.
3. Cf. R. BERTOLINO, "Libertà e communione nel misterio di evangelizzazione," in *Monitor Ecclesiasticus* 116 (1991), pp. 95–137.
4. Cf. also *DV*, 21; *SC*, 35; *NAE*, 4.

Insofar as the *foundations* are concerned on which this ministry is grounded, the canon indicates the following: the Holy Scriptures, tradition, liturgy, the magisterium, and the life of the Church. This list is taken from Vatican II (*CD* 14), in which bishops are encouraged to base catechesis on these sources.[5] The canon adopts the conciliar principle regarding catechesis and extends it to the ministry of the word.

To protect the specific rights to receive the purpose of this ministry, i.e., the word in its fullness, the instrument that is provided is disciplinary. There are penal sanctions for not carrying out the duty to proclaim the word in its fullness, whether by failing to take actions that should be taken or by committing improper actions, such as passing on a word that is not authentic. These unjust actions require a response from pastors, who will use fraternal correction, warnings (cf. c. 1341), and if necessary, the penal sanctions provided under c. 1389 § 2 to try to prevent or at least mitigate the harm caused in the Church by these actions.[6]

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5. Cf. C.J. ERRÁZURIZ M., *Il 'Munus docendi Ecclesiae': diritti e doveri dei fedeli* (Milan 1991), pp. 52–58.

6. Cf. CDF, Instr. *Donum veritatis*, May 24, 1990, nos. 24–31: *AAS* 82 (1990), pp. 1560–1561.

761 **Varia media ad doctrinam christianam annuntiandam adhibeantur quae praesto sunt, imprimis praedicatio atque catechetica institutio, quae quidem semper principem locum tenent, sed et propositio doctrinae in scholis, in academiis, conferentiis et coadunationibus omnis generis, necnon eiusdem diffusio per declarationes publicas a legitima auctoritate occasione quorundam eventuum factas prelo aliisque instrumentis communicationis socialis.**

While pride of place must always be given to preaching and catechetical instruction, all the available means of proclaiming Christian doctrine are to be used: the exposition of doctrine in schools, in institutes of higher learning, at conferences and meetings of all kinds; public declarations by lawful authority on the occasion of certain events; the printed word and other means of social communication.

SOURCES: *EcS* 648; *IM* 13, 14; *CD* 13; Syn. Bish. Decl., 28 Oct. 1967; *GCD* 116–124; *CT* 46–5

CROSS REFERENCES: cc. 666, 747 § 2, 756, 762–780, 831

COMMENTARY

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Means of proclaiming Christian doctrine

This canon, just before mentioning the two most fundamental ways of exercising the ministry of the word (preaching and the catechesis), makes an important statement: all licit ways are suitable for spreading the Christian doctrine.

The term “proclaiming the doctrine,” which appears in this canon in addressing *ways* to be used in the ministry of the word, is not proposing a concept different from evangelization, i.e., this term has the same meaning as “ministry of the word” used in the broad sense. Its use in this canon simply reflects the adoption of the wording used in the latest Council (*CD* 13).

It is important to note that the canon does not say which authority is responsible for using all these different methods. Logically, this has to be the case, since responsibilities are quite diverse, depending on the audience and who uses what means. This responsibility is determined by considering the persons exercising this ministry (e.g., cc. 756–759, 831) as wells as the means.

The faithful may use any tool as a way to spread the Gospel. Bishops, who have access to many means, do not only have the duty to mandate and supervise, which is their responsibility that depends on the means that are directly dependent on a hierarchical office.. In addition to the mandate and supervision, there is a pastoral responsibility to proclaim the evangelical truth in an authorized manner and foster the faithful spreading of the truth in the greatest possible number of ways. Bishops should ensure that the word that is given in the Church is the same as the word given by Christ (cf. c. 760), and beyond this point allow the faithful full freedom and responsibility. Therefore, the faithful enjoy full freedom when employing the various ways and means of evangelizing.

The means used to proclaim Christian doctrine, which have changed over the history of the Church and will continue to change, are quite varied. This canon distinguishes two that are considered particularly important: preaching and catechesis. Other ways are then listed, with no attempt to be exhaustive. Given the abundance of methods that are used in evangelizing, one central juridical aspect is that the type of evangelizing be indicated, i.e., that it be made clear to the faithful whether the effort is public or private. If public, channels should be set up to ensure that these efforts are done by persons duly representing the Church.

One of the ways, which is mentioned in the Code with very few other juridic specifications and which is of great importance, is the *public declaration* made on the occasion of certain events. The canon states that the authority of the Church is to make such statements, because only the authority can make public declarations on behalf of the Church (for observance of these statements by the faithful, see c. 747 § 2).[1]

There is also a growing concern in the Church over the use of public media. The authority of the Church considers these media to be proper instruments for carrying out the mission of "preaching to all the nations (Mk 16:15) "and to the ends of the earth" (Acts 1:8) the word of salvation.[2]

1. Cf.: *IM* 13; *CT* 46; SCCE, *Dio sommo bene*, March 19, 1986, *Orientamenti per la formazione dei futuri sacerdoti circa gli instrumenti della comunicatione sociale*, in *EV* 10, pp. 58–116; PCSC, Instr. *Aetatis novae*, February 20, 1992, in Ecclesia 52 (1992), pp. 562–573.
2. Cf. *Comm.* 9 (1977), p. 260.

762 **Cum Dei populus primum coadunetur verbo Dei vivi, quod ex ore sacerdotum omnino fas est requirere, munus praedicationis magni habeant sacri ministri, inter quorum praecipua officia sit Evangelium Dei omnibus annuntiare.**

The people of God are first united through the word of the living God, and are fully entitled to seek this word from their priests. For this reason sacred ministers are to consider the office of preaching as of great importance, since proclaiming the Gospel of God to all is among their principal duties.

SOURCES: *LG* 25; *PO* 4; *DPMB* 55; *EN* 42

CROSS REFERENCES: cc. 213, 386 § 1, 528 § 1, 764.

COMMENTARY

José A. Fuentes

I. THE PREACHING OF THE WORD OF GOD

Canon 762 opens chapter I, which focuses on preaching, the first of the two forms of the ministry of the word.

1. *Area of application of the chapter on preaching*

One who may have argued during the work of codification that the chapter on preaching should be placed before the chapter on catechesis on the grounds that the first chapter addresses general themes on the subject[1] might lead one to think that the first chapter also applies to catechesis. But in no way can this argument be supported. The origin of these doubts also goes back to the systemization of the *CIC*/1917. In that Code, preaching the word was included as part of the canons on the magisterium, and it consisted of three chapters: catechetical instruction, sacred preaching (i.e., preaching properly speaking), and sacred missions.

1. Cf. c. 762; R. NAZ, "Prédication," in *Dictionaire de Droit Canonique*, t. 7, p. 162.

The current systematics departs from the earlier system because preaching always directly depends on the public function of the Church, while catechesis does not always have this dependence. Further, the very area regulated by the canons differs greatly. Thus the canons on preaching are not applicable to catechesis, not even catechesis organized directly by ministers. They are two separate ministries.

2. *Concept of preaching*

The Code does not give a definition of preaching, but it does give a rich description of it. Given the perspective from which it is viewed in the current Code, we may say that preaching is an act of specifically authorized public teaching, done in the name of the Church by sacred ministers for the faithful, meeting for the purpose of being instructed and confirmed in the faith.[2]

The public aspect of preaching is so fundamental that it was traditionally thought necessary for this ministry to take place at sacred places, or if done elsewhere that it be made clear that it was a liturgical act. The Code does not expressly require this, but the general sense of the canons infers a relationship of the preaching ministry with sacred places or ceremonies. In any case, it is always necessary that preaching be a public act of the Church, done by a minister who is not speaking only in his own name, but who officially represents the Church. Liturgical preaching, particularly the homily within the Eucharist, is the model for all preaching.

In the Church, those who have received a *mission* to preach may do so, either because they have been appointed to an office that entails the ministry of preaching to the Christian people or because the authority recognizes the right or faculty of specific members of the faithful to preach. The necessity of a mission is based on the words of St. Paul, among other texts: "How will they preach if they are not sent?" (Rom 10:15).

Prior to the *CIC*, it was common to base the faculty to preach on jurisdiction. Further, preaching was often considered to be an act of the Church's magisterium, which also implied jurisdiction. A parallel was even drawn with the jurisdiction necessary to hear confession.[3] The common rule was a general limitation of the faculty to preach. An exception, which

2. Cf. cc. 1337–1340 together with cc. 874, 875, 877 and 880 *CIC*/1917, which deal with the faculties for preaching and hearing confessions; cf. also S. ALONSO MORÁN, in S. ALONSO MORÁN-M. CABREROS DE ANTA, *Comentarios al Código de Derecho Canónico*, t. 3 (Madrid 1964), pp. 13, 24.

3. Cf. F.X. WERNZ-P. VIDAL, *Ius Canonicum*, t. 4 (Rome 1935), pp. 38–40.

was granted as a privilege to various religious institutes, was the broad capacity to exercise this faculty.[4]

However, it has not seemed proper in the current Code to link this preaching faculty directly to jurisdiction; in fact, the Code makes it directly dependent on the order. The mission is now being conferred upon receiving the sacrament of orders (cf. c. 764). In any case, the exercise of this faculty continues to depend on jurisdictional authority, since it depends on certain ecclesiastical offices that, having jurisdiction, can limit and direct its exercise. As the Code states, this faculty may be "restricted or removed by the competent Ordinary" (c. 764), i.e., by those having jurisdiction over certain clergy and people. Thus, this is a ministry that is exercised subject to authority so that a preacher's teachings are not taken as private doctrine, but rather as teachings to which the Church is publicly committed.

3. *Norms on preaching*

Beginning with c. 762, the Code very carefully determines the capacities and rights of persons to preach. The universal system of the *CIC*/1917 is a fundamental aid to a proper understanding of the current universal norms and particular norms that will be mentioned below for additional background.[5] It is necessary to refer briefly to certain canons that have been abrogated because the distinctions made in the former code are still useful for an understanding of the current Code. In the earlier code, the various capacities to preach were categorized as follows: *a)* faculty to preach: this presumed acknowledgment of a general right to preach which was received from a canonical mission; *b)* license to preach: permission from a Superior for expeditious use of a canonical mission; and *c)* consent and approbation to preach: terms used to mean that an *a iure* condition (or some other condition required by the person granting the mission) had been met. With respect to this system, it should be added that a license meant granting general permission, without regard to the faithful who were going to hear the preaching. On the other hand, the terms *consent* and *approval* were above all used to confirm that authority had been given to preach specifically to the faithful. It is helpful to keep these distinctions in mind, not only because they help to gain an understanding of the canons in this Code, but also because they may turn up in various ways in particular norms issued after the *CIC*.

4. In addition to the *CIC*/1917, cf. *SCCong*, Norms *Ut quae*, June 28, 1917: *AAS* 9 (1917), pp. 328–341; BENEDICT XV, Enc. *Humani generis*, June 15, 1917, *AAS* 9 (1917), pp. 305–317.

5. Cf. K. MÖRSDORF, *Lehrbuch des Kirchenrechts auf Grund des Codex Iuris Canonici*, v. 1 (Munich-Paderborn-Vienna 1964), p. 14.

The universal canons on preaching that follow c. 762, a ministry which depends on sacred orders, define the rights, faculties, and capacity to preach (cc. 763–766).

II. RIGHT OF THE FAITHFUL TO RECEIVE THE WORD AND DUTY OF THE MINISTERS TO PREACH

In the context of examining the preaching of the word as an essential element of the structure of the Church[6] and as the means by which the people of God are first united (cf. *PO* 4) and the Church is established (cf. *AG* 6), c. 762 directly proclaims the *right* of all the faithful to *receive the word of God* and the corresponding *duty* of the pastors to *preach the Gospel to everyone.*

1. First, it is remarkable that a *right* is proclaimed whose understanding requires a distancing from the highly reductionist concept that explained it as if it were a consequence of the submissive status of the faithful, i.e., of the subordinate relationship between the baptized and the hierarchy. In fact, this right to the word depends on the condition of the communion of the faithful. The word has been given to all the people of God, not just to the hierarchy for transmission to the faithful. The faithful, to the extent that they are living in communion (with other faithful and the pastors) have this right and may demand that the ministers and the pastoral instruments through which the Church's activity is organized are at the service of a fundamental *right* which, it may be said, procedes, ontologically, from the functions of the hierarchy. The English translation of "omnino fas est requirere" (the term used to describe this right) as "absolute right" would not seem satisfactory. The exercise of this right, like all the other fundamental rights, is contingent upon reasons and requirements.[7]

2. Second, the corresponding *duty* of proclaiming the word is also set forth. The clear duty to spread the word is incumbent upon everyone in the Church (cf. c. 225 § 1), but the canon only mentions ministers, since from the institutional point of view, this duty falls on them, especially those who are called to exercise the responsibilities of a public ministry and because this canon directly addresses a specific public ministry, i.e., preaching, which is considered inherent to ordained ministers. John Paul II teaches that the priest "is a debtor to the People of God, since he has been called to acknowledge and foster the fundamental 'right' to be recipients of the word

6. Cf. J. HERVADA, *Elementos de Derecho constitucional canónico* (Pamplona 1987), pp. 110–113; C.J. ERRÁZURIZ M., *Il 'Munus docendi Ecclesiae': diritti e doveri dei fedeli* (Milan 1991), p. 67.
7. Cf. F. BOLOGNINI, *Lineamenti di Diritto Canonico* (Turin 1991), p. 224.

of God, the Sacraments and charity, which are original and irrenounceable aspects of the pastoral ministry" (*PDV* 70).

The canon uses the words "ministers" and "priests," but in any case, these words mean everyone who has received the sacrament of orders, including both priests and deacons. The word "priests" is used for certain terms taken from the sacred Scriptures (Mal 2:7).

As far as literal expressions used in the canon are concerned, a change with respect to the wording used in Vatican II should be noted. At that time, it was stated that the ministry of proclaiming the Gospel was "primary" for priests (*PO* 4). Now, however, this ministry is described as one of their *main duties*. Perhaps describing it as one of the main duties rather than the primary duty reflects a desire to emphasize the ontological importance of celebrating the Eucharist.[8]

3. This canon does not proclaim the *duty of the faithful to receive the word;* in fact, this duty is rarely regulated in book III, but this does not mean that it has altogether ceased to be dealt with in the canonical regimen. It is mentioned when requiring the preaching of a homily at Sunday Masses and when stipulating prior formation in order to receive the sacraments.[9] This duty is also mentioned in the canons on access to certain public functions and when certain conditions of life are assumed.[10]

8. Cf. cc. 767 § 2, 851, 889 § 2, 913, 1002, 1027, 1063; cf. also *FC*, 68.
9. Cf. C.J. ERRÁZURIZ M., *Il 'Munus docendi Ecclesiae'*..., cit., p. 70.
10. Cf. *CIC*/1917, cc. 349 § 1, 239 § 1,3°, 1326, 1327 § 2.

763 **Episcopis ius est ubique, non exclusis ecclesiis et oratoriis institutorum religiosorum iuris pontificii, Dei verbum praedicare, nisi Episcopus loci in casibus particularibus expresse renuerit.**

Bishops have the right to preach the word of God everywhere, even in churches and oratories of religious institutes of pontifical right, unless the local Bishop has expressly forbidden it in particular cases.

SOURCES: cc. 349 § 1, 1°, 1343 § 1; *PM* II, 1

CROSS REFERENCES: cc. 381, 386 § 1, 391 § 1, 762

COMMENTARY

José A. Fuentes

Preaching: an inherent right of bishops

Beginning with this canon, definitions are given of the various capacities (and sometimes rights) of those in the Church who may preach. Canon 763 quite satisfactorily states that "Bishops have the right to preach; further, other canons provide that priests have the faculty" (c. 764) and that the laity may be allowed to preach under certain circumstances (c. 766). Different terms are used, so it is clear that their capacities are different and that only the sacred ministers are persons who ordinarily preach.

The main functions bishops have with respect to preaching depends on the fact that this ministry is an instrument of the episcopal office for the good of the congregation of the people of God (cf. *LG* 25).

The *CIC*/1917 recognized that bishops had the faculty to preach everywhere, but it was understood to be a privilege.[1] Under the current Code, the general capacity to preach depends on ordination as a bishop: "Bishops," says Vatican II, "in as much as they are the successors of the apostles, receive from the Lord ... the mission of teaching all peoples, and of preaching the Gospel to every creature" (*LG* 24). On the basis of these words, the canon states their *right to preach everywhere*, including churches and oratories of institutes of pontifical right. This, then, is a true

1. Cf. *Schema, c.* 718, in *Comm.* 15 (1983), p. 94.

right recognized by universal law, and is not a privilege.[2] The norm is a consequence of particular episcopal dignity and of the fact that ordination as a bishop itself entails a special relationship with the word and the bishop's responsibilities for the entire Church (*LG* 25; *CD* 12). Therefore, this right does not extend to vicars, prefects or apostolic administrators who are not bishops.

In no way does this canon mean that bishops are to preach everywhere with the same authority and power as is the case when they are preaching (as successors of the apostles and by divine right) to the people who have been entrusted to them. The Code recognizes that they have received a mission that they can exercise throughout the world, but at the same time, it provides that each bishop, in his own jurisdiction, is the moderator and person responsible for all preaching. Thus any preacher, including another bishop, may only preach within the just limits set by the bishop of the faithful entrusted to him.[3]

The legislator assumes there will be no limits on preaching by bishops and therefore stipulates that restrictions must be expressly stated and be applicable to certain situations. This canon reflects the fact that the basis on which the right to preach is grounded is none other than communion (cf. 375 § 2). Everyone who has received the fullness of the priesthood through a bishopric and remains in communion may preach anywhere, and diocesan bishops may not generally decree otherwise. Only in certain cases may a diocesan bishop limit and in some instances prohibit preaching by another bishop.

As far as the bishops' duty to preach is concerned, prior to the *CIC*, bishops were required to personally preach, with regularity.[4] Canon 386 § 1 states that diocesan bishops should preach frequently.

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2. Preachers exercise their duty to preach as collaborators with, but subordinate to, the bishops: cf. Council of Trent, *Sess.* 5, *de ref.*, ch. 2 and *Sess.* 24, *de ref.*, ch. 4 (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33, Graz 1961, cols. 30–31 and 159); BENEDICT XV, Enc. *Humani generis*, June 15, 1917, *AAS* 9 (1917), p. 307; *LG* 28; *CD* 3, 11; and *PO* 7.

3. Cf. c. 58 (57) Apost.; c. 6 (ex Stat. Eccle. Antiq.) D. 88; Lateran Council IV (yr. 1215), ch. 10 (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 22, col. 998). In the Council of Trent, cf. *Sess.* 5, ch. 2 *de ref.*, *Sess.* 24, ch. 4, 7 (ibid.., v. 33, cols. 30–31, 159–160); in *CIC*/1917, cf. cc. 1327 § 2 and 1346 § 1.

4. Cf. *CIC*/1917, cc. 1337, 1338.

764 **Salvo praescripto can. 765, facultate ubique praedicandi, de consensu saltem praesumpto rectoris ecclesiae exercenda, gaudent presbyteri et diaconi, nisi ab Ordinario competenti eadem facultas restricta fuerit aut sublata, aut lege particulari licentia expressa requiratur.**

Without prejudice to the provisions of Can. 765, priests and deacons, with the at least presumed consent of the rector of a church, have the faculty to preach everywhere, unless this faculty has been restricted or removed by the competent Ordinary, or unless particular law requires express permission.

SOURCES: cc. 1337, 1338 § 3, 1340–1342; *SCCong* Normae, 28 Jun. 1917, II et IV (*AAS* 9 [1917] 330–331, 333)

CROSS REFERENCES: cc. 381, 391 § 1, 528 § 1, 561, 765, 966

COMMENTARY

José A. Fuentes

The sacred ministry, ordinary subject of preaching: the faculty of priests and deacons to preach

1. *Acquiring the faculty to preach*

Priests and deacons have the *faculty* to preach by virtue of ordination. Traditionally, the sacred ministers' faculty to preach has been quite limited, but the current Code sets forth a discipline that is considerably different. Prior to the *CIC*/1917, the local ordinary and the superiors of the regular clergy granted this faculty to those subject to them. Religious also needed a blessing or permission from the local ordinary, depending on whether they were going to preach in their own church or others. The *CIC*/1917 stipulated that both secular and religious clerics had to be granted the faculty to preach by a local ordinary, with the exception of preaching to the religious or the faithful living in their homes, in which cases permission was granted by the religious superior.[1] Further, it was expressly stipulated that no one could legally exercise a preaching ministry without having received the canonical mission from a legitimate

1. Cf. CIC/1917, cc. 1327, 1328.

superior. This mission was granted directly or considered a part of the appointment to an office that involved preaching duties.[2]

The discipline of the CIC is clearly different. It takes the approach that preaching should be dependent upon the ministry of orders, and an attempt was made to simplify the Code so that at no time would the faithful be deprived of the public proclamation of the word. Both priests and deacons have the faculty to preach by virtue of having received ordination, so this faculty is not grounded on any appointment to office.[3] Thus, it is provided a iure that all priests have this faculty; i.e., all are sent and may preach anywhere. Belief that the sacrament of orders is received to serve the entire Church is a consequence of the conciliar doctrine on the universal nature of the priesthood.

The fact that preaching is especially linked to the sacrament of orders is based upon the profound, particular configuration with Christ which this sacrament brings about in the subject.[4] Therefore, it is not a matter of formation, as if the faithful who are clerics automatically had the capacity to preach upon attaining a certain level of theological knowledge. This would be against the discipline the Church has always maintained.

The direct dependence of preaching on orders does not mean that the two fundamental principles that have always shaped discipline and which are still in force should be ignored: *a)* that all preachers are sent by the Church; and *b)* that the preaching ministry, like any other ministry exercised by priests, is a ministry of cooperation with bishops. Each ordinary may limit or restrict preaching. The exercise of this faculty therefore depends on the persons who possess jurisdiction.

2. *The scope in which the faculty of preaching may be exercised*

Under the canons, particularly c. 764, the scope in which the preaching faculty may be exercised is limited to the following:[5]

— in order to exercise the preaching faculty, the permission, or at least the presumed permission, of the rector of the church is required (cf. cc. 561 and 528 § 1);

— in order to preach to religious in their churches or oratories, permission from the competent superior is required (cf. c. 765);

2. Cf., in *CIC*/1917, c. 1 § 7 D. 25 (St. Isidore).
3. Cf. EdM, *Theological principles* and art. 2.
4. Cf. *CIC*/1917, c. 1340; *SCCong*, Norms *Ut quae*, June 28, 1917, *AAS* 9 (1917), pp. 328–341; BENEDICT XV, Enc. *Humani generis*, June 15, 1917, *AAS* 9 (1917), pp. 307–309.
5. General guidelines for the preacher, although to a great extent superceded by the new norms, can be found in *SCCong*, Norms *Ut quae*, June 28, 1917: *AAS* 9 (1917), pp. 328–341.

— The faculty to preach may be limited or revoked either by the local ordinary or the ordinary of the preacher or of the faithful (c. 764). The authority may only restrict or revoke use of this faculty for the purpose of protecting the right of the faithful to the word.

The ordinary may revoke the faculty to preach or restrict its use to clerics under his jurisdiction. In the case of other clerics, the ordinary may prohibit preaching at a given time or place and must inform the local ordinary or proper ordinary, as the case may be.[6] It must be understood that this authority must be used for well-founded reasons. The *CIC*/1917 stipulated a limit on this authority, which is still in full force: ordinaries may revoke the faculty to preach in the event of a serious reason (cf. c. 1339 § 1). Serious reasons may include teachings by a cleric that are against the truths of the faith and the Church's discipline or a cleric whose lifestyle has tarnished his standing so that his ministry would be damaging to the faithful.

If a cleric feels that limits have been unjustly imposed on his faculty to preach, he may have recourse to the Holy See. Such recourse is suspensive, and the cleric shall refrain from preaching until such time as the authority decides otherwise.

6. *SCCong*, Norms *Ut quae*, June 28, 1917, in *AAS* 9 (1917), p. 329.

765 Ad praedicandum religiosis in eorum ecclesiis vel oratoriis licentia requiritur Superioris ad normam constitutionum competentis.

To preach to religious in their churches or oratories, permission is required of the Superior who is competent according to their constitutions.

SOURCES: c. 1338 § 2

CROSS REFERENCES: cc. 586, 611,3°, 1214, 1215 § 3, 1223

COMMENTARY

José A. Fuentes

Preaching to religious

A general limit is set on exercising the preaching faculty. In order to preach to religious in their churches and oratories, *permission from the superior* is required in accordance with their proper law.[1] It is not strange that permission should be required in these cases. As we have seen, even bishops preach with the tacit approval of the local bishop (c. 763), and priests and deacons are always required to obtain the consent or at least the tacit consent of the church's rector in order to preach (c. 764). This normative criteria, in an attempt to set up a certain measure of control over preaching, is what influences the limit set in c. 765 on preaching to religious. What is intended, in any case, is that the proper pastor's responsibility for the group of faithful to whom he is proclaiming the word will be respected. Unless indicated otherwise, the appointment of a chaplain to a given community includes license to preach (c. 566 § 1).

The license required under this canon applies to priests, deacons, and of course to the eventual preaching of the laity. However, it does not apply to bishops, who, under c. 763, may preach anywhere, including churches and oratories at religious institutes under pontifical right.

1. Cf. F.E. PRADO ARIAS, "El sujeto del ministerio de la palabra en la Tradición apostólica," in *Excerpta e dissertationibus in iure canonico*, 6 (Pamplona 1988), pp. 296–332; *C* 16, q. 1, c. 19 (St. Leo. yr. 453); *X* V, 7, 12, 14; Lateran Council IV (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 22 (Graz 1961), col. 990).

766 **Ad praedicandum in ecclesia vel oratorio admitti possunt laici, si certis in adiunctis necessitas id requirat aut in casibus particularibus utilitas id suadeat, iuxta Episcoporum conferentiae praescripta, et salvo can. 767, §1.**

The laity may be allowed to preach in a church or oratory if in certain circumstances it is necessary, or in particular cases it would be advantageous, according to the provisions of the Bishops' Conference and without prejudice to Can. 767 §1.

SOURCES: c. 1342; PIUS PP. XII, Alloc., 31 May 1954 (*AAS* 46 [1954] 316); *IOe* 37

CROSS REFERENCES: cc. 207 §1, 228, 230, 455, 767 §1, 1214, 1223

COMMENTARY

José A. Fuentes

Preaching by the laity

1. *Innovation in the discipline*

The discipline on preaching by the laity is one of the most conspicuous innovations in the *CIC*. Throughout history, there have been many canonical provisions limiting preaching to clerics or directly prohibiting the laity from preaching. In the earliest sources found in patristics and the canons, there is a clear distinction between the function of teaching the faithful and the function of ordained ministers.[1] There are also certain records throughout history that seem to indicate the possibility of preaching by the laity, but there are only a few specific instances compared to many instances stating that preaching is a ministry of clerics.[2]

The Pio-Benedictine Code absolutely prohibited non-clerics from preaching. Since this prohibition applied to non-clerics, it may be assumed that at that time, when the so-called minor orders existed, preaching was not limited to priests and deacons. Ordinaries, in fact, for a just and reasonable cause, allowed other clerics to preach (c. 1342 §§ 1 and 2, *CIC*/1917).

1. Cf. D. 23, c. 29, and the commentary on this canon which proceeded from the Fourth Council of Carthage.
2. Cf. *Schema, cc.* 1342 and 1338, in *Comm.* 19 (1987), pp. 246, 256, and 20 (1988), p. 125.

Canon 766 permits the laity to preach under certain circumstances. The reason for this change in discipline is not to be found in Vatican II's recognition of the laity's responsibilities in the Church, i.e., the *sources of this canon* are not *LG* or *AA*, which are conciliar texts proclaiming their mission. The new norm is based on the need to fill in for priests or in particular cases where it would be advantageous. This is literally how the canon reads and this can also be inferred from its sources, as can be seen above. "Since it is a task done as a stand-in, it is formally and immediately legitimized in the official duty done by pastors, and any given exercise thereof depends on supervision by Church authorities" (*CL* 23).

The possibility of preaching by the laity was phrased more and more openly as the Code was being drafted. This phrasing progressed from a negative wording that allowed preaching by the laity only in cases of need to acceptance that the laity could also preach in cases where it was advantageous, and the current positive wording thus came about.[3] This canon allows preaching by the laity (women as well as men[4]), but only in the following situations: (a) in cases of need (when the ministers are absent, for example), or in situations in which it would be particularly advantageous; and (b) guidelines must be established by the bishops' conference and must always be followed.[5]

2. *The laity have the capacity, but not the right to be called to preach*

We should ask whether the canon is setting forth a right of the laity or only a capacity, and whether permission to preach in a church or oratory is only a *nihil obstat* or a constituent element that is not otherwise possessed by the laity.[6] Preaching is a public, institutional function normally reserved to the clergy, but the other faithful only have a capacity to preach. For this reason, there was a proposal during the drafting of the Code to modify the canon to use the term *faculty*, but the answer was: "Non admittitur: non agitur de vera facultate sed de semplice permissione."[7] It is then a capacity that requires special permission to be exercised and not a right that is regulated and limited by canonical norms.

3. Texts which traditionally have been cited to justify the exclusion of women from preaching are as follows: 1 Cor 14, 34–35; 1 Tim 2, 11–12; *Const. Apos.* Lib 3, ch. 6 (F.X. FUNK, *Didascalia et Constitutiones Apostolorum*, v. 1, Paderborn 1905, p. 190); D. 23, c. 29 (Stat. Eccl. Antiq.); D. 4 *De Consecrat.*, c. 20.

4. Cf EdM, art. 2

5. Cf. C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 215–222; G. FELICIANI, "La predication des laïcs dans le Code," in *L'Année canonique* 31 (1988), pp. 117–130.

6. *Relatio* of 1981, in *Comm.* 15 (1983), p. 95.

7. Cf. C.J. ERRÁZURIZ M., *Il "munus docendi...*, cit., p. 217; H.M. LEGRAND, "I laici e la predicazione," in *Sacra Doctrina* 29 (1984), pp. 351–353.

3. *The nature of preaching by the laity*

If we want to describe *preaching by the laity* with greater precision, the first thing that becomes clear is that it cannot be equated with *preaching by an ordained faithful*, since an ordained faithful, by virtue of the sacrament of ordination, has a relationship with the word that Christ gave to the Church that we must consider to be ontologically diverse. The particular relationship with Christ entailed by the sacrament of orders makes a ministry diverse in either case. All work in ministry, in all dimensions of the word, and in the sacraments, is diverse. When a minister preaches or administers communion (using the term *minister* in the juridical sense of cc. 232–293, where it is used exclusively to refer to ordained persons), he represents Christ at that moment in a different way, so his ministry cannot be equated with the ministry of one of the faithful who is not ordained. This is precisely the reason for a norm that for centuries prohibited this ministry by the laity and which now limits it to very specific situations. It is a matter of safeguarding the clear distinction of the ordained ministry: the fundamental difference between a common priesthood and a ministerial priesthood.

The Code uses the term *faculty* to describe the juridical situation of priests and deacons with respect to preaching. However, it uses the simple term *permission* when speaking of the laity, which implies "a juridic situation that is less permanent and above all less grounded in the personal status of a given person than is a true faculty. In fact, clerics are sacramentally intended to preach, among other things, by representing Christ by virtue of their sacramental status itself. The normal possession of the preaching faculty is therefore proper (with exceptions) for their status in the Church, since they have the function inherent in their *ordo*. Persons who are not ordained may preach, but only persons collaborating with ordained ministers, not as if they were exercising a function to which they were entitled. The very wording used: "may be allowed," confirms this, which would not be said if it was the exercise of a true right. All this reflects *a constitutional reality of the Church: the ministry of the word properly speaking, i.e., the function of officially and publicly proclaiming the word of God, is conferred by orders*. This ministry is thus normally exercised by someone who represents Christ in virtue of the order he has received."[8]

Preaching by the laity, according to the Code, is an act which is public in nature because, among other things, the term *preaching* is used interchangeably throughout the chapter and because the legislator, in referring to any apostolic proclamation of the word, uses expressions in the broad sense (c. 722 § 2, e.g., states "sermonem de doctrina christiana"). The

8. Cf. C.J. ERRÁZURIZ M., *Il "munus docendi...*, cit., p. 218.

public nature of this lay ministry is also seen because it is regulated in instances where it is done in public and semi-public places.[9]

4. *Norms of particular law*

Canon 766 authorizes bishops' conferences to enact norms on preaching by the laity. This competence is to be understood within the limits set by this canon, and it is clearly stated that the canon only addresses preaching by the laity in churches and oratories. Bishops' conferences then are acknowledged to have the capacity to set norms only with respect to these places and in cases of need or special advantage.

Since the canon only addresses lay preaching in churches and oratories, this implies that there are no limits on the universal norms and that there is no special authorization of Conferences with respect to *preaching in other places*. Further, it must not be forgotten that the general limitation in question here applies exclusively to preaching properly speaking, so the laity may speak and teach with catechetical instruction in churches and oratories. To be sure, the distinction from preaching must be made clear in these cases.[10]

The Conferences' competencies may serve to bring about a certain uniformity in given territories. Their capacity to establish norms is directed at determining the circumstances under which lay preaching is allowed under conditions which are to unite the faithful, the time and method of preaching, who is to give authorization in each case, etc. The majority of the Conferences interpret the canon restrictively. Thus the Spanish Bishops' Conference requires a canonical mission, the Italian Conference requires a mandate, and many other conferences require a permission from an ordinary (Spain, France, Italy, etc.) or from the bishop (Chile, the Philippines, Ireland, Peru, etc.).[11]

According to c. 772 § 1, diocesan bishops have the competence to set norms in areas not covered by the competence of the conferences. As moderators of the entire ministry of the word, diocesan bishops may make decisions on other lay efforts. Among other provisions, they may set limits on preaching outside sacred places. In any case, the purpose of these limits must always be to protect the rights and duties of ministers and the faithful. It would be another issue to determine to what extent it would be advisable to call efforts outside sacred places preaching and regulate such efforts.

9. Cf. S. ALONSO MORÁN, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, Código de Derecho Canónico y legislación complementaria (Madrid 1974), p. 524.

10. Cf. *Enchiridion Conferenza Episcopale Italiana* 3 (Bologna 1987), p. 1316, no. 2277; BCEE 2 (1985), p. 62; J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopale complementare al CIC* (Milan 1990).

11. *Comm.* 7 (1975), p. 152; EdM, art. 3.

767 **§ 1. Inter praedicationis formas eminet homilia, quae est pars ipsius liturgiae et sacerdoti aut diacono reservatur; in eadem per anni liturgici cursum ex textus sacro fidei mysteria et normae vitae christianae exponantur.**

§ 2. In omnibus Missis diebus dominicis et festis de praecepto, quae concursu populi celebrantur, homilia habenda est nec omitti potest nisi gravi de causa.

§ 3. Valde commendatur ut, si sufficiens detur populi concursus, homilia habeatur etiam in Missis quae infra hebdomadam, praesertim tempore adventus et quadragesimae aut occasione alicuius festi vel luctuosi eventus, celebrentur.

§ 4. Parochi aut ecclesiae rectoris est curare ut haec praescripta religiose serventur.

§ 1. The most important form of preaching is the homily, which is part of the liturgy itself, and is reserved to a priest or deacon. In the course of the liturgical year, the mysteries of faith and the rules of christian living are to be expounded in the homily from the sacred text.

§ 2. At all Masses on Sundays and on holydays of obligation, celebrated with a congregation, there is to be a homily and, except for a grave reason, this may not be omitted.

§ 3. It is strongly recommended that if a sufficient number of people are present, there be a homily at weekday Masses also, especially during Advent and Lent, or on a feast day or an occasion of grief.

§ 4. It is the responsibility of the parish priest or the rector of a church to ensure that these provisions are carefully observed.

SOURCES: § 1: *MD* 529; *SC* 35, 52; *IOe* 54–56; *DV* 24; *PO* 4; *SCDW* Instr. *Actio pastoralis*, 15 May 1969, 6 (*AAS* 61 [1969] 809); GIRM 41, 42, 165; *SCDW* Instr. *Liturgicae instaurationes*, 15 Sept. 1970, 2 (*AAS* 62 [1970] 695–696); PCIDSVC Resp., 11 Jan. 1971 (*AAS* 63 [1971] 329); *SCCong* Rescr., 20 Nov. 1973; *DPMB* 59, 64; *EN* 43; *CT* 48; *ID* 3

§ 2: cc. 1344 § 1, 1345; *SC* 52; PAULUS PP. VI, Litt. Ap. *Sacram Liturgiam*, 25 Jan. 1964, III (*AAS* 56 [1964] 141); *IOe* 53; GIRM 42; *DPMB* 64; *CT* 48

§ 3: c. 1346 § 1; *SC* 49; PAULUS PP. VI, Litt. Ap. *Sacram Liturgiam*, 25 ian. 1964, III (*AAS* 56 [1964] 141); *IOe* 53; GIRM 42; *DPMB* 64; *CT* 48

CROSS REFERENCES: § 1: c. 834
§ 2: cc. 389, 528 § 1, 1246, 1247
§ 3: c. 837 § 2|
§ 4: cc. 386 § 1, 528 § 1, 561

COMMENTARY

José A. Fuentes

Preaching of a homily

1. *Preaching of the homily is a ministry reserved to clerics*

Homily is understood to mean "an explanation, proper to some aspect of the lesson from the Sacred Scripture or proper to another text taken from the ordinary or the proper of the Mass of the day, giving as much as an account of the mystery which is being celebrated for the specific needs of those who are listening" (*IOe* 54).

The homily is reserved for ministers, i.e., priests and deacons. Reserving the homily in this way was justified when the Code was being drafted because it is a type of preaching that is part of the liturgy itself.[1] Insofar as liturgical acts are concerned, the faithful (both clerics and the laity) should each perform their own ministries (*SC* 28), and authorities, based on tradition, agree that in certain acts of worship, expressly including eucharistic worship, explaining the word cannot be separated from sacramental rites. Therefore, the so-called "participatory homilies" that have been expressly rejected by the Holy See on various occasions are incompatible with both liturgical principles and the discipline set forth in this canon.[2] Any other participation that might be confused with preaching also seems to be incompatible with the rules. So-called testimonials, which should be presented to the people as something truly different from preaching and which take place at the beginning or end of eucharistic worship, are different.[3]

The requirement of having received sacred orders in order for one to preach a homily is grounded on the belief that this form of preaching is

1. Cf. *SCDW*, Instr. *Actio pastoralis*, May 15, 1969, no. 6, *AAS* 61 (1969), p. 809; SCDS, Instr. *Liturgicae instaurationes*, September 5, 1970, no. 2, *AAS* 62 (1970), p. 696; SCSDW, Instr. *Inaestimabile donum*, April 3, 1980, no. 3, *AAS* 72 (1980), p. 334.
2. Cf EdM, art. 3.
3. Cf. *AAS* 79 (1987), p. 1249.

part of a eucharistic liturgy and therefore, if sacred orders are lacking, then an essential element of a true and proper homily is also missing. This has been authoritatively confirmed by a *reply* from the Pontifical Council for the Interpretation of Legislative Texts, which states that reserving the homily to ordained ministers, as set forth in this canon, cannot be dispensed by a diocesan bishop.[4] This is not an optional provision: it is a truly fundamental law that admits of no dispensation (cf. c. 86).

The norms of the *SCDW* Directory on children's masses,[5] which allowed the participation of a layperson to present the word to children after the Gospel, is no longer in effect because of the prescriptions of this canon (cf. cc. 6 §§ 1–2; 33 § 1). The exception that had been granted in Germany under a reply dated September 20, 1973 has also been abrogated.[6] In 1987, the *SCCong* definitively repealed the old special rule that allowed laypersons in Germany to preach homilies in certain situations. More recently, certain rules of the German Bishops' Conference, made public on February 24, 1988, which do not constitute a general executory decree, suggest that a layperson may participate at the beginning of the mass ("im Sinne einer Statio zu Beginn des Gottesdienstes"[7]). Since the days of the early Church, this *statio* at the beginning of the mass has meant something quite different from preaching a homily. It is thus necessary to acknowledge that at present there are no exceptions to the rule.[8]

Finally, it should be determined whether the restriction on homilies only applies to the celebration of the Eucharist or whether it also applies to other liturgical acts. Such a determination is not easy, but along these lines a text on liturgical celebrations of the word, which uses wording similar to that found in the norms prior to this code (*IOe* 37) from the Instruction on Sunday celebrations without a priest reads, "Since the homily is reserved to priests and deacons, the best thing to do is for the parish priest to give the homily he has prepared to the group's moderator to be

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4. Cf. no. 6, in *AAS* 66 (1974), pp. 37–38.

5. Cf. X. Ochoa, *LE Ecclesiae*, v. 5, col. 6685, no. 4240. The expression of the GIRM, 42, according to which "the homily should ordinarily be given by the priest celebrant," at no time has meant that those who were not priests or deacons could preach the homily: PCIDSVC, January 11, 1971, *AAS* 63 (1971), p. 329.

6. Cf. Communication of the German Bishops' Conference Press office, September 21–24, 1987, in *Klerusblatt* 67 (1987), pp. 301–302; "Ordnung des Predigtdienstes von Laien," in *Amtsblatt des Bischöflichen Ordinariats* Berlin 60 (1988) no. 73, pp. 64–65; W. Schultz, "Problemi canonistici circa la predicazione dei laici nella normativa de la Conferenza episcopale tedesca," in *Apollinaris* 62 (1989), pp. 171–180.

7. Cf. C.J. Errázuriz M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 222.

8. SCSDW, "Directorium de celebrationibus dominicalibus absente presbytero," June 2, 1988, no. 43, in *Notitiae* 24 (1988), p. 376.

read. However, provisions set forth on this point by the bishops' conference must be followed."[9]

2. *Obligation to preach homilies*

Paragraph 2 of this canon requires a homily on Sundays and holy days of obligation, and § 3 *recommends* homilies during celebrations of the Eucharist on other days. There has been an ongoing emphasis for centuries on the advisability of frequent preaching. Examples include recommendations that bishops preach often and at least three days a week during Lent and Advent, as well as provisions that parish priests should preach on holy days of obligation, regardless of the number of faithful in attendance.[10]

A homily during the mass was not required so clearly and resolutely in the *CIC*/1917 (cf. cc. 1344–1345),[11] and there is some question as to how binding it was on clerics. Now there is no question about this obligation. The canon is clear: priests have a true obligation. Insofar as the seriousness of the obligation is concerned (a problem mainly of moral importance), the canon stipulates that a homily can be left out only for a grave cause.[12] The *IOe* required in its time that homilies should be given on the days indicated, even on convent or pontifical celebrations (n. 53).

The preaching of homilies is the only provision in the canons on the ministry of the word that specifies the *duty* of the faithful to receive evangelical teaching. In fact, the faithful are obligated to listen to homilies on Sundays and other days of obligation, since those are the days the faithful are obligated to attend mass, and the homily is obligatory at these masses if they are celebrated and people are in attendance (c. 1247). There is then not only an obligation to carry out this ministry of the word, but also an *obligation to attend* a ministry that is considered an integral part of the liturgy itself.

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9. Co uncil of Trent, *Sess* 5, *de ref.*, ch. 2, *Sess* 22 *de sacrif. Missae*, ch. 8, *Sess* 24 *de ref.*, ch. 4, 7 (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33 (Graz 1961), cols. 30–31, 131, and 159–160); SCPF, April 18, 1757, in GASPARRI, *Fontes*, v. 7, no. 4524, p. 60; *CIC*/1917, c. 1344. Regarding particular norms and the liturgical practice therefrom, cf. F.X. WERNZ-P. VIDAL, *Ius Canonicum*, t. 4 (Rome 1935), p. 35.

10. In the previous norms, considering as irrational the custom of not fulfilling the presriptions regarding preaching: cf. INNOCENT XIII, Const. *Apostolici ministerii*, May 23, 1723, § 11, in GASPARRI, *Fontes*, v. 1, no. 280, pp. 582–592; SCCouncil, April 1, 1876, in *AAS* 9 (1876), pp. 489–493.

11. C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 71, note 111.

12. Cf. *Comm.* 19 (1987), p. 248.

3. *Ensuring the observance of norms on homilies*

The last paragraph directs that parish priests and church rectors should take care to observe the norms on homilies. Although pastors and particularly the persons responsible for places of worship have direct responsibility for everything that affects the pastoral care of the faithful, the duties that are expressly treated in the canons imply an obligation of special importance.

768 **§ 1. Divini verbi praecones christifidelibus imprimis proponant, quae ad Dei gloriam hominumque salutem credere et facere oportet.**

§ 2. Impertiant quoque fidelibus doctrinam, quam Ecclesiae magisterium proponit de personae humanae dignitate et libertate, de familiae unitate et stabilitate eiusque muniis, de obligationibus quae ad homines in societate coniunctos pertinent, necnon de rebus temporalibus iuxta ordinem a Deo statutum componendis.

§ 1. Those who announce the word of God to Christ's faithful are first and foremost to set out those things which it is necessary to believe and practice for the glory of God and the salvation of all.

§ 2 They are also to explain to the faithful the teaching of the magisterium of the Church concerning the dignity and freedom of the human person; the unity, stability and duties of the family; people's social obligations and the ordering of temporal affairs according to the plan established by God.

SOURCES: § 1: c. 1347 § 1; *SCCong* Normae, 28 Jun. 1917, III (*AAS* 9 [1917] 331–333); *CD* 12; *EN* 27
§ 2: *CD* 12; *GS* 41, 42; PCJP Decl., 10 Dec. 1974, 70–77; *EN* 29

CROSS REFERENCES: cc. 227, 747 § 2, 750, 752, 753, 760, 795

COMMENTARY

José A. Fuentes

Contents of preaching

The contents of preaching are specified here. Logically, in speaking of something that greatly depends on the circumstances of time and place and since preaching must be adapted to the needs of the faithful (cf. c. 769), the only thing indicated is the fundamental framework within which the contents of preaching should be situated. This canon specifies preaching topics more concretely and definitely from among those that are more generally recommended in c. 760 for the entire ministry of the word. Although one consultor wanted to delete all provisions on preaching topics when the Code was being drafted, arguing that it should be left to the pastoral

prudence,[1] the majority opinion prevailed and the traditional magisterium was followed to provide limits for the topics of preaching.

1. Let us consider first the origin of the canon's two paragraphs in order to later assess their importance and the doctrinal balance they present.

a) Paragraph 1 is inspired by c. 1347 of the *CIC*/1917. It prescribes the sacred contents of preaching in accordance with traditional doctrinal and disciplinary principles. Authorities of the Church had always been interested in defining the object of preaching, and their efforts to do so were so great that they should continue to be taken into account. Among these, it is necessary to point out certain provisions of the Council of Trent (*Sess. 23, de ref.* c. 14), the Encyclical *Humani generis* of Benedict XV (1917), and certain *Norms* on sacred preaching given by the *SCCong* in 1917.[2]

Paragraph 2 uses phrasing from Vatican II (*CD* 12) that synthesizes the Council's deepening of the Church's mission with respect to temporal realities.

b) Given the origin of these two paragraphs and the post-conciliar doctrine on the Church's evangelizing mission, specifically as contained in Paul VI's Encyclical *Evangelii nuntiandi* (December 8, 1975), the doctrinal value of this canon should be understood. But before going into this doctrinal value and how the two paragraphs of the canon complement each other, let us point out their *disciplinary value.* In spite of the broad terms that are used, they nevertheless contain some true norms. The primary purpose of preaching is clearly defined, as is the contents the various topics must have, particularly so that preaching on temporal realities convey the teaching of the magisterium. It should be noted that the canon does not state that preaching on temporal issues should be grounded in the magisterium or that preaching should be done with the magisterium in mind. What it expressly says is that what should be conveyed to the faithful about temporal realities is "the teaching of the magisterium." Preachers are obligated to be a channel of this authoritative teaching.

The two aspects of the purpose of preaching are defined in such a way that we can say that there would be no true preaching outside the disciplinary boundaries set by the canon, particularly if preaching ignores the preachers' dependency on the magisterium. The limits of preaching are a

1. Cf. Council of Trent (MANSI, *Sacrorum conciliorum nova et amplissima collectio,* v. 33 (Graz 1961), cols. 30–31 and 159); BENEDICT XV, Enc. *Humani generis,* June 15, 1917, in *AAS* 9 (1917), pp. 305–317; *SCCong,* Norms *Ut quae,* June 28, 1917, in *AAS* 9 (1917), pp. 328–341.

2. Cf. C. SOLER, "Los contenidos del ministerio de la Palabra," in *La misión docente de la Iglesia* (Salamanca 1992), pp. 98–112.

more concrete manifestation of the general limits on the function of teaching on temporal issues contained in c. 747 § 2.[3]

2. Let us now discuss the *doctrinal value* and the connection between the two paragraphs.[4] It is immediately made clear that the primary purpose of preaching is to convey the truths of the faith and what individuals have to do to obtain salvation. The fact that this is the primary purpose is indicated by the word *imprimis,* which gives a secondary position to the preaching topics given under § 2.

What is required for salvation is Christ himself, his person and his teaching, what he has taught us, and the way to salvation, which is the Church. This salvation is not to oppose the teaching of the topics given in the second paragraph, which points out the necessary relationship with evangelizing and therefore with the ministry of the word, and with natural truths and temporal issues.

The separation of the supernatural from the natural in these two paragraphs of the canon do not imply any theological judgment on this traditional distinction. This is only to set a priority among the topics of preaching and to ensure that the Church, until it attains "its perfection only in the glory of heaven" (*LG* 48) should "cherish a feeling of deep solidarity with the human race and its history" (*GS* 1). When the Church proclaims the truth about the natural human order, it cannot help but take into account that, by the will of God, even earthly things are ordered to the salvation of souls (cf. *CD* 12). It is Christ himself who teaches us the truth about the world, so we should say that the second paragraph of the canon is really included in the first paragraph. "In pursuing its own salvific purpose not only does the Church communicate divine life to men but in a certain sense it casts the reflected light of that divine life over all the earth, notably in the way it heals and elevates the dignity of the human person, in the way it consolidates the cohesion of society, and endows the daily activity of men with a deeper sense and meaning. The Church, then, believes it can contribute much to humanizing the family of man and its history through each of its members and its community as a whole" (*GS* 40).[5]

Vatican II proclaimed both that the Church has in Christ the truth of everything human and that her mission is neither merely human nor does she try to direct the human social order. "Grounded on this faith, the Church can 'raise the dignity of human nature above all fluctuating opinions,' by 'the Gospel which Christ entrusted to the Church; for the Gospel announces and proclaims the freedom of the sons of God'; at the same time, the Church respects the 'the autonomy of the creature, of man in particular,' since her mission is 'not in the political, economic, or social or-

3. Cf. A. DE FUENMAYOR, "El juicio moral de la Iglesia sobre materias temporales," in *Ius Canonicum* 12 (1972), pp. 106–120.
4. Cf. *EN* 18–20; RM 20.
5. Cf. c. 747 § 2; *SCCong*, Norms *Ut quae*, June 28, 1917, in *AAS*, 9 (1917), pp. 328–341.

der'" (*GS* 41; cf. *GS* 42 and *CD* 12). The concern for humanity and for making moral judgments on human behavior should work hand in hand to prevent preaching from falling into political arguments about which the Church (since there are many opinions and the faithful have free will) says nothing.[6]

Both the first and second paragraphs illustrate the practical meaning of the ministry of the word. It does not consist of merely passing on certain truths, as if it were a mere intellectual exercise, but rather of *teaching the way to good works*. Paragraph 1 states that preaching should center on what it is necessary to do and believe, and § 2 illustrates the necessary relationship of the word, and thus of the ministry of the word, with morals.

6. Cf. *PDV* 70. Cf. also S. Congr. of Bishops, *Instr.* July 31, 1894 (P. GASPARRI, *Fontes*, v. 4, no. 2024, pp. 1061–1067); St. PIUS X, mp *Sacrorum Antistitum*, September 1, 1910, in *AAS* 2 (1910), pp. 672–680; BENEDICT XV, Enc. *Humani generis*, June 15, 1917, *AAS* 9 (1917), pp. 305–317; *SCCong*, Norms *Ut quae*, June 28, 1917, *AAS*, 9 (1917), pp. 328–334.

769 Doctrina christiana proponatur modo auditorum condicioni accomodato atque ratione temporum necessitatibus aptata.

Christian teaching is to be explained in a manner that is suited to the condition of the hearers and adapted to the circumstances of the times.

SOURCES: c. 1347 § 2; *CD* 13; *PO* 4; *GS* 4; *EN* 40, 63

CROSS REFERENCES: c. 248

COMMENTARY

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Manner of preaching: adapting preaching to the needs of the faithful

On the subject of the *manner* of preaching, the norms of the Code require the *necessary adaptation* of the spreading of the word to the capabilities and needs of the faithful who will hear it. This canon, summarizing a conciliar text (*CD* 13) states that ministers of the word should make every effort to achieve this adaptation because, by virtue of a divine call, they are at the service of the word and the faithful. They "should present the word of God not only in a general and abstract manner, but also by applying the eternal truths of the Gospel to specific circumstances of life" (*PO* 4) by addressing "the difficulties and problems that most worry and concern people" (*CD* 13).

Ministers, in order to attain the most perfect *faithfulness* since "the first requirement of an administrator is that he prove trustworthy" (1 Cor 4:2), should make every effort to acquire adequate preparation which they must maintain with ongoing formation by following the guidelines given by their authorities on training and the qualities that preachers should possess.[1] Adapting preaching to the needs of the faithful does not conflict with faithfulness to the word. It is the other way around: it is faithfulness to the Gospel that demands addressing these needs.

The Council, in addition to proclaiming the necessary adaptation of preaching to the specific circumstances of the faithful, indicated that preaching is also dependent upon the charisms of the ministers of the

1. Cf. C. SOLER, "Los contenidos del ministerio de la Palabra," in *La misión docente de la Iglesia* (Salamanca 1992), pp. 92–94.

word (cf. *PO* 4). This statement, which has not been incorporated into the Code, implies that preaching, in addition to conveying objective information, should necessarily be informed by the person delivering it. Preaching may contain elements of personal experience that are brought to life by the minister if truly beneficial to the faithful. Conveying true charisms when suitable is what was traditionally meant by "contemplata tradere."[2]

2. Regarding the nature, history, and established practice of carrying out spiritual exercises, cf. PIUS XI, Enc. *Mens Nostra*, December 20, 1929, in AAS 21 (1929), pp. 689–706.

770 Parochi certis temporibus, iuxta Episcopi dioecesani praescripta, illas ordinent praedicationes, quas exercitia spiritualia et sacras missiones vocant, vel alias formas necessitatibus aptatas.

At certain times, according to the regulations of the diocesan Bishop, parish priests are to arrange for sermons in the form of retreats and missions, as they are called, or in other forms adapted to requirements.

SOURCES: c. 1349, SCCouncil Ind., 25 Jan. 1927; SCCouncil Ind., 3 Mar. 1938, SCCouncil Rescr., 2 Feb. 1960

CROSS REFERENCES: cc. 381, 528 § 1, 772

COMMENTARY

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Manner of preaching: various forms of preaching

Other than the obligation to preach a homily on holy days, there is no universal rule requiring certain forms of preaching. Canon 770 discusses the advisability of other forms of preaching which could become mandatory for parish priests, depending on particular norms. Two specific forms of preaching are given: "spiritual exercises"[1] and "sacred missions." These missions consist of a time for special preaching addressed to Catholics in places where the ordinary hierarchy has been established.[2] The *CIC*/1917 (c. 1349 § 1) required that a *mission* should be preached in each local church at least once every ten years. Now the Code leaves the timing of these missions and any other special preaching in general to particular norms.

This canon mentions two specific forms of preaching so that they can be encouraged in different ways. There are many other types of preaching. Theologians and liturgists distinguish the various forms of preaching mainly by topic and the faithful to whom the preaching is addressed. There is kerygmatic preaching, exhortative preaching, liturgical preaching, etc. Out of all these forms of preaching, the special nature of

1. Cf. PIUS IX, Enc. *Nostis et Nobiscum*, December 5, 1849, no. 11, and Enc. *Singulari quidem*, March 17, 1856, no. 9 (GASPARRI, *Fontes*, v. 2, nos. 508 and 521, pp. 841 and 908).
2. Cf. PIUS XII, Ap. Const. *Exsul Familia*, August 1, 1952, in *AAS* 44 (1952), pp. 649–704; *SCCong*, *Directorio general sobre la pastoral del turismo*, March 27, 1969, in *AAS* 61 (1969), pp. 361–384.

the liturgical form, the homily, is recognized from the canonical point of view, and it is to be done through particular channels, by authorized ministers following requirements applicable to all preaching, as instruments of proclamation and communion.

Among the various forms of preaching, it should be remembered that so-called catechetical preaching (which differs from other forms in its content), just like the other forms, is subject, from the juridic point of view, to the norms on preaching. Likewise, catechesis, even when given by sacred ministers, is *not* preaching: it remains subject to the title on the catechesis. In a given situation, it may be difficult to distinguish between catechesis and catechetical preaching. In practice, if it is given by a minister to the generally convened faithful in a form other than the dialectical method of the catechesis, it is preaching.

771 **§ 1. Solliciti sint animarum pastores, praesertim Episcopi et parochi, ut Dei verbum iis quoque fidelibus nuntietur, qui ob vitae suae condicionem communi et ordinaria cura pastorali non satis fruantur aut eadem penitus careant.**

§ 2. Provideant quoque, ut Evangelii nuntium perveniat ad non credentes in territorio degentes, quippe quos, non secus ac fideles, animarum cura complecti debeat.

§ 1. Pastors of souls, especially Bishops and parish priests, are to be solicitous that the word of God is preached also to those of the faithful who, because of the circumstances of their lives, cannot sufficiently avail themselves of the ordinary pastoral care or are even totally deprived of it.

§ 2. They are also to take care that the message of the Gospel reaches those living in their territory who are non-believers, since these too, no less than the faithful, must be included in the care of souls.

SOURCES: § 1: PIUS PP. XII, Ap. Const. *Exsul Familia*, 1 Aug. 1952, 32–49 (*AAS* 44 [1952] 699–702); *CD* 18; *SCCong* Instr. *Peregrinans in terra*, 30 Apr. 1969, II, 3 B c (*AAS* 61 [1969] 375–376); SCB Instr. *Nemo est*, 22 Aug. 1969 (*AAS* 61 [1969] 614–643); *DPMB* 58, 71; *EN* 52, 56
§ 2: c. 1350 § 1; *SC* 9; *LG* 16; *CD* 13; *AG* 10, 20; *DPMB* 71, 160; *EN* 55, 58

CROSS REFERENCES: § 1: cc. 383 § 1. 529 § 1
§ 2: c. 787

COMMENTARY

José A. Fuentes

Manner of preaching: preaching in special or extraordinary situations

The practical and efficacious nature that was intended to be given to the canons on the ministry of the word is clear in the two paragraphs of this canon, in which pastors are asked to organize their pastoral work so that the word of God is proclaimed to everyone: both to the faithful and to non-believers.

First, § 1 stipulates that the authority of the Church (at both the universal and local level) should organize all ministries of the word around the right of the faithful to receive proper pastoral care. This pastoral care does not just mean the usual care provided through the Church's normal channels, but, in an acknowledgment of more or less special or extraordinary situations, it is pointed out that pastors have an obligation to see that the ministry of evangelization reaches everyone in whatever way is most advisable. To do so, pastoral efforts, which should be as dynamic as possible, should be adapted to these situations (cf. *CD* 12–14 and 30, and c. 770, which also stipulates the need to adapt evangelizing methods to the needs of the faithful).

One specific way of delivering this pastoral care mentioned in c. 568 is to appoint chaplains wherever pastoral care cannot be provided. These chaplaincies, which have proved their effectiveness in certain environments, for example, in the case of emigrants, are only one of many initiatives that will arise to assist and expand ordinary pastoral care. *CD* 18 gives examples of some of these special situations: emigrants, the exiled, fugitives, sailors, nomads, etc.[1]

Paragraph 2 on *pastoral care for non-Christians* is grounded on c. 1350 § 1 of the *CIC*/1917, but now instead of *non-Catholics*, it reads *non-believers*. Vatican II proclaims once again the Church's maternal consideration for all people, both believers and non-believers (cf. *CD* 13 and *AG* 5–8). The Church is called to give the word to all people, since it is responsible for everyone. On the treatment of non-believers, John Paul II taught: "The Lord Jesus sent his Apostles to every person, people and place on earth. In the Apostles, the Church received a universal mission—one which knows no boundaries—which involves salvation in its integrity" (*RM* 31; cf. *EN* 55). *Cura animarum* thus extends to all people, including non-believers, although the relationship of authority to believers and non-believers is different. "Because to us, as with Saint Paul, 'this grace was given, to preach to the Gentiles the unsearchable riches of Christ' (Eph 3:8) … The Church, and every individual Christian within it, may not keep hidden or monopolize this newness and richness which has been received from God's bounty in order to be communicated to all mankind" (*RM* 11). We Christians have the responsibility for drawing all people to Christ and, while respecting others' freedom (cf. c. 748 § 2), we should make every effort to do so, because "we know, however, that Jesus came to bring integral salvation, one which embraces the whole person and all mankind, and opens up the wondrous prospect of divine filiation" (*RM* 11).

The *proclamation of Christ* to non-believers should be placed within the context of an *interreligious dialogue* that is also part of the Church's

1. Cf. J. PROVOST, "Brought together by The Word of The Living God", in *Studia Canonica* 23 (1989), pp. 369–370.

evangelizing mission. It is necessary to make these two areas of its mission *ad gentes* compatible. "These two elements, proclaiming Christ and interreligious dialog, must maintain both their intimate connection and their distinctiveness; therefore they should not be confused, manipulated or regarded as identical, as though they were interchangeable ... Dialogue should be conducted and implemented with the conviction that *the Church is the ordinary means of salvation* and that *it alone* possesses the fullness of the means of salvation" (*RM* 55). In this interreligious dialogue, "there must be no abandonment of principles nor false irenicism, but instead the reciprocal testimony for the mutual progress on the road of inquiry and religious experience, and at the same time for the elimination of prejudice, intolerance and misunderstandings" (*RM* 56).

772 **§ 1. Ad exercitium praedicationis quod attinet, ab omnibus praeterea serventur normae ab Episcopo dioecesano latae.**

§ 2. Ad sermonem de doctrina christiana faciendum via radiophonica aut televisifica, serventur praescripta ab Episcoporum conferentia statuta.

§ 1. In the exercise of preaching, everyone is moreover to observe the norms laid down by the Bishop of the diocese.

§ 2. In expounding christian teaching on radio or television, the provisions of the Bishops' Conference are to be observed.

SOURCES: § 1: c. 1345; *SCCong* Normae, 28 Jun. 1917, 1 (*AAS* 9 [1917] 328–334); *DPMB* 64
§ 2: *IM* 13; *DPMB* 65

CROSS REFERENCES: § 1: cc. 391, 392 § 2, 756 § 2
§ 2: cc. 455, 666, 823, 831 § 2

COMMENTARY

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Particular law on the ministry of the word

This canon provides for the *competency* of particular law in the area of the ministry of the word, which shall always be subject to the few, but important provisions set forth in universal law, specifically the Code.

With respect to the ministry of the word, particular law may determine aspects that were regulated earlier by the *CIC*/1917, but which are now determined by diocesan norms and in some cases by the norms of bishops' conferences. Thus, decisions on the requirements preachers must meet and the frequency, topics, and forms of preaching and procedures for removing preachers, etc., can be made when it would be deemed necessary.[1] The bishop may determine subject matter to be preached, and even its precise content.[2] This implies that, as § 1 indicates, the general

1. Cf. PIUS IX, Enc. *Qui pluribus*, September 9, 1846, no. 7 (GASPARRI, *Fontes*, v. 2, no. 504, pp. 813–814).
2. Concerning the social communications media, see: *IM*, 13–22; and PCSCM, Instr. *Communio et Progressio*, May 23, 1971, in *AAS* 63 (1971), pp. 593–656, and Instr. *Aetitis novae*, Feb. 20, 1992, no. 21, in *Ecclesia* 52 (1992), p. 571.

responsibility of each bishop in his diocese is recognized. The diocesan bishop is the person who sets these norms.

Paragraph 2 refers to bishops' conferences' regulation of the ministry of the word which is spread through the specific medium of radio and television. This is a decision that recognizes not just the general importance of social communications media for evangelizing, but above all, the fact that these media exercise an influence that reaches beyond a given diocese. This is the reason for assigning this responsibility to the Conferences, which may use their rule-making authority as they deem prudent.[3]

It should be noted that the Conferences' competence has to do with the "sermo de doctrina christiana." It is thus not limited just to preaching or catechesis, but also extends to the general ministry of the word over radio and television. This provision should be interpreted in conjunction with c. 831 § 2, which stipulates that in regulating this matter, it is necessary to distinguish between work done by clerics and religious and work done by the rest of the faithful. The reason for this distinction arises from the fact that the faithful who are not clerics or religious, in principle, are not answerable to the Church or its authority as such regarding these matters.

3. Cf. *CT* 18; *CD* 14; *GCD* (1997) 61–64.

CAPUT II
De catechetica institutione

CHAPTER II
Catechetical Formation

773 **Proprium et grave officium pastorum praesertim animarum est catechesim populi christiani curare, ut fidelium fides, per doctrinae institutionem et vitae christianae experientiam, viva fiat explicita atque operosa.**

There is a proper and serious duty, especially on the part of pastors of souls, to provide for the catechesis of the Christian people so that the faith of the faithful becomes living, explicit and productive through formation in doctrine and the experience of Christian living.

SOURCES: c. 1329; *CD* 14; *GE* 4; *GCD*; *EN* 44; Syn. Bish. Nuntius, 28 Oct. 1977; *RH* 19; *CT* 1, 14–16, 24, 62–64

CROSS REFERENCES: cc. 213, 217, 386 § 1, 528 § 1, 760, 843 § 2

COMMENTARY
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I. Catechetical Instruction

Chapter II begins with canon 773, and is devoted to the second of the two forms of the ministry of the word which is of greater importance: catechetical instruction.

1. *Concept of catechetical instruction*

Catechesis is a time of evangelization whose purpose is to educate children, youth, and adults in the faith. It involves teaching the Christian doctrine, which is generally presented organically and systematically.[1]

In the ancient Church, catechetical instruction consisted of formation concerning the articles of faith, morals, and the means of salvation that was given to the uneducated, catechumens, and neophytes.[2] Of the three levels of the catechesis, formation of catechumens acquired special importance in the first few centuries. Now this formation is more broadly understood as a catechesis for everyone, not just for those preparing to join the Church or who have little education.

The most important contribution regarding catechetical instruction and, in general, regarding the renewal of Church life, which was wanted and promoted by John Paul II, was the approval of the *Catechism of the Catholic Church* on June 25, 1992.

2. *Fundamental normative aspects*

The canons in this chapter address the three aspects of catechesis that have the greatest juridic importance, and they are as follows: the very content of catechesis (cc. 773 and 780), the persons who actively teach catechetics under the guidance of the magisterium (a consideration that is addressed one way or another by all the canons in this chapter), and finally, catechetical tools, with special attention being given to catechisms (cc. 775, 779 and 780).

The persons in the Church who catechize are all the faithful. It is recognized that catechesis, unlike preaching, which c. 762 states is an activity proper to ordained ministers, is the right of all the faithful. So long as they remain in true communion with the pastors, they have the *right* to teach Christian doctrine organizationally and systematically, as well as the basic *capacity* to be called to participate in the Church's official and public catechesis.

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1. Cf. Council of Trent *Sess.* 24, *de ref.* ch. 4, 7; *Sess.* 25, *de indice libr. et catechismo* (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33 (Graz 1961), cols. 159–160, 194); PIUS IX, Enc. *Nostis et nobiscum*, December 5, 1849, nos. 8–9 (GASPARI, *Fontes*, v. 2, pp. 840–841); St. PIUS X, Enc. *Acerbo nimis*, April 15, 1905, in *ASS* 37 (1904–1905), pp. 613–625; PIUS XI, mp *Orbem catholicum*, June 29, 1923, in *AAS* 15 (1923), pp. 327–329; SCCouncil, *Decr.* constituting the catechetical office in every diocese, April 16, 1924, in *AAS* 16 (1924), p. 431 and also pp. 287 and 332.

2. This is the term used by the SCDF, in their *Reply* of July 7, 1983, in *AAS* 76 (1984), p. 52; and by the *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "El catequista y su formación. Orientaciones pastorales," in *Documentos colectivos del Episcopado español sobre formación religiosa y educación*, t. 2 (Madrid 1986), nos. 27–30, pp. 1148–1150.

In referring to catechesis, the canons do not reduce it just to what is taught to children, since catechesis should be taught to all the faithful and adapted to various factors, such as age and the situation and needs of the times.

3. *Types of catechesis*

The fundamental distinction with respect to the catechesis that must always be remembered in order to understand the various norms properly has to do with different relationships with the hierarchy. There is catechesis that is directly under the responsibility of the hierarchy, such as the parish catechesis, and others that depend on the free initiative of the faithful, such as catechesis imparted by parents to children. The first type of catechesis is an evangelizing effort that is publicly subject to and recognized by the proper authority; this catechesis may be called *official catechesis*,[3] a term the authority itself uses. The other catechesis does not possess an *institutional character* and depends on the faithful's own initiative. In both cases, there must be perfect communion with the pastors and their magisterial teaching, without which there would be no true catechesis.

School catechesis has special pastoral importance, but juridically it falls under one of the two preceding categories. Formally Catholic schools teach official Catholic catechesis, but schools that are only materially Catholic, that is to say Christian-inspired schools that are not administered by the church authority, teach a non-institutionalized catechesis for which the faithful are personally responsible.[4]

4. *Sources of the norms*

The sources currently regulating catechetical activity are:

a) The *Catechism of the Catholic Church*, promulgated by John Paul II by the Apostolic Constitution *Fidei depositum* of October 11, 1992; and the *Directorium catechisticum generale* of August 25, 1997.

b) *Rite of the Christian Initiation for Adults*, January 7, 1972.

3. Cf. *Comm.* 15 (1983), p. 98.

4. Cf. respectively: *a)* Ap. Const. *Fidei depositum*, in *AAS* 86 (1994), pp 113–118; *b) AAS* 64 (1972) p. 252; *c) AAS* 68 (1976), pp. 5–76; *d) AAS* 71 (1979), pp. 1277–1340; *e) AAS* 76 (1984), pp. 45–52. Cf. also other important factors in determining the catechesis prior to the present regulation: PIUS XI, mp *Orbem catholicum*, June 29, 1923, in *AAS* 15 (1923), pp. 327–329; SCCouncil, Decr. *Provide sane*, January 12, 1935, in *AAS* 27 (1935), pp. 145–154. Regarding the normative values of the *Directorium Catechisticum generale*, cf. J. OTADUY, *Un exponente de la legislación postconciliar. Los directorios de la Santa Sede* (Pamplona 1980), pp. 56, 213.

c) Apostolic Exhortation of Paul VI, *Evangelii nuntiandi*, December 8, 1975, which, in addressing persons teaching catechesis, mentions not only church and school environments, but also the family.

d) Apostolic Exhortation of John Paul II, *Catechesi tradendae*, October 16, 1979, which is particularly relevant to the purpose of the catechesis and persons teaching it.

(e) Finally, in 1983, the canons of this chapter of the Code and a reply from the Sacred Congregation for the Doctrine of the Faith of July 7, 1983, which further defines the responsibilities of the pastors and the faithful for approving and using catechisms.[5]

II. PASTORS ARE PRIMARILLY RESPONSIBLE FOR CATECHETICAL EDUCATION

All the faithful have some responsibility for teaching catechesis, but the pastors, the sacred ministers, have the primary duty to supervise catechesis. Under the Code, clerics who have special care of souls have an *ex iustitia* duty which they should carry out for the faithful, that is to say, those that have been entrusted to their care.[6] In all other cases, clerics have an *ex caritate* duty.[7]

Canon 773 states this duty of the pastors in terms taken from c. 1329 of the *CIC*/1917 and uses wording from *Christus Dominus* 14. Perhaps the most appropriate place for a canon setting forth pastors' duties to watch over catecheses would have been following c. 774, i.e., after the canon describing the general solicitude that all the faithful should have for the catechesis, and just before the specific listing of the ministers' duties regulated by c. 775.

In this area, as also happens with other areas in different parts of the Code, a systematic order alone is not enough to grasp the diverse juridical and pastoral duties. Various determinative norms must be taken into consideration. Thus, looking at all the canons on the catechesis as a whole, we can state that the pastors' duties in this area are focused on encouraging and protecting the faithful's multiform catechetical activity, supplementing their efforts whenever their initiatives are insufficient, and assigning certain catechesis to be taught by and directed by the faithful.

5. SCCouncil, Decr. *Provide sane*, January 12, 1935, in *AAS* 27 (1935), pp. 145–154.
6. Cf. M. CONTE A CORONATA, *Institutiones Iuris Canonici*, v. 2 (Turin 1931), p. 253.
7. Cf. the Extraordinary Synod of Bishops of 1985, which resulted in the publication of *Ecclesia sub verbo Dei*, December 7, 1985, in *EV*, 9, no. 1799, p. 1761.

III. PURPOSE OF CATECHESIS

Canon 773 also states the *purpose* of the catechesis. It is to be taught so that the faith of the faithful becomes a living, visible, and active faith. This wording, taken from Vatican II (*CD* 14), illustrates that catechesis and the teaching function in general cannot be understood as a purely theoretical means of sharing the faith. There can be no dichotomy between sharing and practicing the faith, as if sharing it has to do with teaching it and practicing it has to do with sanctification. Catechesis can be distinguished from the teaching function itself, but it cannot be separated from the other functions of the Church. Further, not even faith itself is necessarily subject to the ministerial work of the faithful, catechetical or otherwise, since even though faith comes by hearing (cf. Rom 10:7), God may confer His supernatural gifts by other means (*LG* 16). Catechesis must therefore be designed to change the whole life of the faithful by teaching Christ and everything else as it relates to Christ. One of the ways in which the relationship between the catechesis and life is manifested is their union with the liturgy. Catechesis should be a pathway to liturgical participation (mystagogical catechesis), especially participation which is the core of the liturgy, which are the sacraments.[8]

In following the example set by Jesus himself, personal opinions or variants may not be inserted into catechetical teaching: "My doctrine is not Mine, but His that sent Me" (Jn 7:16) (cf. cc. 760, 768; and *CT* 6).

8. Cf. F.X. WERNZ-P. VIDAL, *Ius Canonicum*, t. 4 (Rome 1935), pp. 50–54.

774 **§ 1. Sollicitudo catechesis, sub moderamine legitimae ecclesiasticae auctoritatis, ad omnia Ecclesiae membra pro sua cuiusque parte pertinet.**

§ 2. Prae ceteris parentes obligatione tenentur verbo et exemplo filios in fide et vitae christianae praxi efformandi; pari obligatione adstringuntur, qui parentum locum tenent atque patrini.

§ 1. The care for catechesis, under the direction of lawful ecclesiastical authority, extends to all members of the Church, to each according to his or her role.

§ 2. Before all others, parents are bound to form their children, by word and example, in faith and in christian living. The same obligation binds sponsors and those who take the place of parents.

SOURCES: § 1: *GCD* 9, 17; Syn. Bish. Nuntius, 28 Oct. 1977; *CT* 16, 63–70
§ 2: cc. 769, 1135, 1335, 1372 § 2; PIUS PP. XI, Enc. *Divini illius Magistri*, 31 Dec. 1929 (*AAS* 22 [1930] 59–62); PIUS PP. XII, Alloc., 23 Mar. 1952 (*AAS* 44 [1952] 270); IOANNES PP. XXIII, Alloc., 3 May 1959, *LG* 11, 35; *GE* 3, 6–8; *AA* 11, 30; *GS* 48; PAULUS PP. VI, Alloc., 4 May 1970; *GCD* 78–81; *EN* 71; PAULUS PP. VI, Alloc., 28 Dec. 1975; *CT* 68

CROSS REFERENCES: § 1: cc. 208, 211, 216, 225 § 1, 229 § 1, 301 § 1, 529 § 2, 747, 775, 780
§ 2: cc. 226, 776, 851,2°, 890, 914, 1136, 1366

COMMENTARY

José A. Fuentes

1. *Right of the faithful to catechize*

Prior to Vatican II, many thought catechesis was an exclusive endeavor of church authority in which the rest of the faithful might be called to participate. Thus the basic duty of parents to educate their children in the faith was understood to amount to two responsibilities: the duty to teach them the "rudiments of the faith" and the duty to take them to catechesis taught by the pastors.[1] In practice, catechesis, other than those publicly offered by the Church, were ignored.

Now the Code states in this canon that all the faithful are to be concerned for catechesis (cf. *CT* 16). And everyone, in all catechetical

activity, is to work "sub moderamine" to the lawful authority. Once again, terms are used to try to carefully define the faithful's relationship with the authority. In this case, the expression is "sub moderamine," because not only communion with the pastors, but also proper guidelines for implementing the initiatives of the faithful, will always exist. In some cases, depending on the type of catechesis, there will also be regulatory and prescriptive norms. The English translation "*under the direction of*" should be understood with the Latin meaning that all catechesis is dependent on the direction of the proper authority. With this in mind, it may be concluded that the authority's responsibility may be described as a function of "moderation," an English term that is translated from the Latin "guia," which is used in the Italian version.

Everyone's concern for catechesis is not a legal duty but a moral responsibility, which the pastors are to encourage and supervise. Note that the word *concern* was carefully chosen, not *obligation*. "The pastors, indeed, know well how much the laity contribute to the welfare of the whole Church. For they know that they themselves were not established by Christ to undertake alone the whole salvific mission of the Church to the world, but that it is their exalted office so to be shepherds of the faithful and also recognize the latter's contribution and charisms that everyone in his own way will, with one mind, cooperate in the common task" (*LG* 30). "The laity ... work devotedly to spread the word of God, especially by teaching the catechism" (*AA* 10). This free initiative, not only on the part of the laity, but the faithful in general, will multiply catechetical teaching efforts. Some will be directly subject to the hierarchy and others, while subject to general oversight, will depend on the faithful's initiative.

Each Christian is to take advantage of the manifold opportunities to learn catechesis as he or she sees fit. There is no canon in the Code that requires attending a certain kind of catechesis, even when one is getting the education required to receive the sacraments. The particular norms thus respect the faithful's right to choose freely the means of formation in the word of God.[2] Ministers, on the other hand, are obligated to confirm from time to time, especially when administering the sacraments, that the faithful have attained the required level of formation through whatever means they may have used. For example, ministers, when administering the Eucharist to children, shall confirm whether they have attained the required catechetical preparation (cc. 843 and 914). This means determining whether their formation, regardless of the type of catechesis in which they

1. Cf. J.A. FUENTES, "The Active Participants in Catechesis and their Dependence on the Magisterium (cc. 773–780)," in *Studia Canonica* 23 (1989), pp. 373–386; J. HERVADA, "Misión laical y formación," in *La misión del laico en la Iglesia y en el mundo* (Pamplona 1987), pp. 481–495, especially p. 493.

2. Cf. R. NAZ, "Catéchisme," in *Dictionaire de Droit Canonique*, t. 2 (Paris 1937), col. 1422.

have been instructed, evidences the faith of the Church and communion with the pastors.

Although these canons do not state the faithful's *right* to be catechized, the specific duties that are being described have no other purpose than to satisfy the right that is sufficiently well established in more fundamental canons. The right to be catechized is only a consequence of the faithful's right to receive the Christian doctrine (cf. c. 213).

2. *Parents' right and duty to catechize*

The *CIC*/1917 stated that parents had the obligation to see that children learned the catechism (c. 1335),[3] but the actual discipline proclaims that parents have the primary responsibility. It is parents who have the first *duty* and it is parents who have the right to form their children: "They are, of course, the first and irreplaceable teachers of catechesis to their children, and they are entitled to do so by the sacrament of marriage" (*CL* 34; cf. CCC, 2225–2226).

The so-called *family catechesis*, which is also to be encouraged and fostered by ministers (c. 776), should be stressed among the evangelizing efforts arising from the free initiative of the faithful.[4] "It is becoming increasingly necessary to ensure that the various types of catechesis and their various areas, beginning with the basic type—the 'informal catechesis,' that is, the catechesis parents teach their children—are a witness to universal participation by all the people of God in the prophetic office of Christ Himself" (*RH* 19).

Although the catechesis parents teach their children has special importance and implies true rights and duties, this catechesis cannot in any way be considered authoritative teaching or teaching specially authorized by the hierarchy. The canon does not grant any rights here or give any special authority to this way of passing on the doctrine. What it *does* do is recognize and proclaim a fundamental *obligation* and a tacit right consequently arising from that obligation. Parents have this duty and right by virtue of being Christian parents, so long as they continue in communion with the Church.

This duty of parents, which entails a right that has priority over the right of any of the other faithful, is described elsewhere as essential and primary (cf. cc. 226 § 2 and 1136) and even *irreplaceable* (*CT* 68; *CL* 34). With this parental responsibility in mind, other canons give mechanisms of protection and specific responsibilities, above all with respect to ad-

3. Regarding catechesis in and by the family, cf. *CT*, 16; and *FC*, 36–39; *GCD* (1997), 226–227.
4. Cf. cc. 793, 851,2°, 890, 914, 1136.

ministering the sacraments, that arise from this parental duty to teach catechetics.[5]

The canon does prescribe that parents are obligated to teach their children the catechism themselves or even take them to someone else to be taught the catechism. It does prescribe a general obligation to form their children in the faith through word and example. It is clear that the customary way of providing this formation is to have children participate in catechesis, but there may always be exceptions (parents who have little formation themselves and who cannot provide catechesis, and those who live in places where there are so few priests that catechesis is not available). In any case, parents' obligation to form their children in the faith may be subject to punishment if it is not done (cf. c. 1366 for an extreme case).

As far as godparents' obligation is defined in this canon, their obligation is not secondary to the parents' duty, but is in addition to it.[6]

5. Cf. E. TEJERO, commentary on cc. 774–775, in *Pamplona Com.*

6. Cf. *PB* 94; *GCD* (1997), 270–271. It was Pius XI who through the mp *Orbem catholicum*, June 29, 1923, in *AAS* 15 (1923), pp. 327–329, instituted a special office in the Roman Curia—at that time established in the SCCouncil—for the purpose of directing and promoting catechesis.

775 **§ 1. Servatis praescriptis ab Apostolica Sede latis, Episcopi dioecesani est normas de re catechetica edicere itemque prospicere ut apta catechesis instrumenta praesto sint, catechismum etiam parando, si opportunum id videatur, necnon incepta catechetica fovere atque coordinare.**

§ 2. Episcoporum conferentiae est, si utile videatur, curare ut catechismi pro suo territorio, praevia Sedis Apostolicae approbatione, edantur.

§ 3. Apud Episcoporum conferentiam institui potest officium catecheticum, cuius praecipuum munus sit singulis dioecesibus in re catechetica auxilium praebere.

§ 1. While observing the provisions made by the Apostolic See, it is the responsibility of diocesan Bishops to issue norms concerning catechetical matters; to ensure that appropriate means of catechesis are available, even by preparing a catechism, if this seems opportune; to foster and to coordinate catechetical initiatives.

§ 2. If it is thought to be useful, the Bishops' Conference may, with the prior approval of the Apostolic See, publish catechisms for its territory.

§ 3. The Bishops' Conference may establish a catechetical office, whose principal purpose is to assist individual dioceses in catechetical matters.

SOURCES: § 1: cc. 1329, 1336; SCCouncil Litt. circ., 31 May 1920 (*AAS* 12 [1920] 299–300); SCCouncil Litt. circ., 24 Jun. 1924 (*AAS* 16 [1924] 332–333); SCCouncil Litt. circ., 28 Aug. 1924; SCCouncil Litt. circ., 21 Jun. 1930 (*AAS* 22 [1930] 395–409); SCCouncil Decr. *Provido sane*, 12 Jan 1935 (*AAS* 27 [1935] 148–154); *LG* 25, 27; *CD* 2, 13, 14; *GE* 2; *GCD* 106, 108, 109, 116–126, 129; *DPMB* 64; *CT* 63
§ 2: *AG* 31; *GCD* 46, 119, 134; *CT* 50; *EP* 4, 1
§ 3: SCCouncil Normae, 12 Dec., 1929; *GCD* 128

CROSS REFERENCES: § 1: cc. 360, 361, 375–376, 381, 386 § 1, 391, § 2, 392 § 2, 756, 827 § 1
§§ 2 and 3: cc. 447, 451, 455, 788 § 3, 827 § 1

COMMENTARY

José A. Fuentes

Canon 775 distinguishes among the normative competence of the Apostolic See, the diocesan bishops, and the bishops' conferences over catechetical formation, particularly the approval and use of catechisms.

1. *Competence of the Holy See over catechesis*

The faithful have the right to receive the true doctrine, and the hierarchy has the right and duty to proclaim the authorized, and if necessary authoritative, doctrinal contents of catechesis. That hierarchical ministry at times demands exercising the governing office and at times a magisterial office. Not uncommonly, both offices may be exercised jointly, which is the case, for example, when a catechism is to be approved and mandated.

Paragraph 1 of this canon notes the general dependence of catechesis to the Apostolic See, where this responsibility is entrusted to the Congregation of Clerics.[1] This Congregation gives the Holy See's required approval of catechisms and is available to catechetical departments from all over the world, particularly the approval of international religious formation initiatives.

2. *Diocesan bishops' competence over catechesis*

Subject to the Holy See, each bishop, who is "the catechist par excellent and primary person responsible for catechesis" (*CT* 63), has the following duties:[2]

— Coordination of all catechetical work and fulfilling the norms established by the Holy See;

— Approval of catechisms and catechetical texts and prescribing which ones to use as the diocese's official catecheses;

1. Regarding the responsibilities of the Roman Pontiff and the bishops: cf. Council of Trent *Sess.* 24, *de ref.* ch. 7, *Sess.* 25, *de indice et catechismo* (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33 (Graz 1961), cols. 160 and 194).

2. Cf. SCCouncil, Decr. December 12, 1929, that mandated the office's establishment in the dioceses of Italy, as soon as was feasible, (OCHOA, *LE Ecclesiae*, v. 1, col. 1118, no. 936); and by virtue of the Decr. *Provide sane*, January 12, 1935, *AAS* 27 (1935), p. 151, it was extended to all dioceses; cf. also *GCD* (1997), 265–267.

— Establishing a diocesan catechetical office;[3]

— Organizing programs to form catechists;

— Fostering and encouraging catechetical initiatives.

As far as the first and last of the above duties (i.e., the general pastoral responsibilities of coordinating and encouraging catechetical initiatives) are concerned, it is necessary to distinguish among the duties involved regarding the various types of catechesis. Thus, bishops direct the dioceses' official catechesis, particularly parish catechesis; they specifically exercise vigilance over any other public catechesis, such as catechesis taught by members of religious institutes and societies of apostolic life in the course of their apostolic work; they coordinate the diocese's catechetical work through the diocesan catechetical office; and they ensure that all catechetical initiatives are conducted in a genuine Catholic spirit.

3. *The competence of bishops' conferences in catechetical instruction*

As is established from universal law (§2 and §3), bishops' conferences are given a general subsidiary function. The canon ascribes them the two following responsibilities, which are precepts:

— To publish national catechisms

— To establish a catechetical department in the Conference, if deemed advisable

The reason why bishops' conferences have to seek the Holy See for approval of catechisms is not that national catechisms are official and diocesan catechisms aren't. Both are official. The reason is that it has been deemed advisable by the legislator that the doctrinal competence of bishops' conferences, in the specific area of catechisms, go through these particular channels of control.

Many bishops' conferences have published catechisms. For example, the Spanish Conference, with the Apostolic See's due approval, has published three catechisms that are considered national: *Padre nuestro*; *Jesús es el Señor y Ésta es nuestra fe;* and *Ésta es la fe de la Iglesia.*[4] The Italian Bishops' Conference has also instructed that various texts be used in catechisms for different ages: children, youths, young adults, adults, and adolescents.

3. Cf. *BOCEE* 14 (1987), p. 65.
4. Ap. Const. *Fidei depositum*, October 11, 1992, no. 4.

4. *System for approving catechisms*

Approving catechisms and catechetical texts is an act of ordinary magisterium. Universal catechisms are approved by the Apostolic See. Recently, John Paul II approved and ordered the publication of a new universal catechism, the *Catechism of the Catholic Church*, which is to be recognized as a "valid instrument authorized to further Church unity and serve as a reliable standard for the teaching of the faith."[5] Diocesan bishops, for their part, are competent to approve catechisms and, when deemed advisable, make certain texts official for their dioceses.[6] If a bishop decides to make certain catechisms official for his diocese, these texts, as the canon stipulates, do not require prior approval by the Holy See, unlike national catechisms and texts which, since they are published by bishops' conferences, do require approval by the Holy See.[7]

In the approval and use of catechisms, it is necessary to follow the Congregation for the Doctrine of the Faith's *Response* of July 7, 1983 (in addition to this canon), which reads as follows:

a) The Conferences' competence to publish catechisms cannot be delegated to subordinate entities. The general requirements that are applicable to national catechisms are also applicable to the so-called "national reference catechisms."

b) National and diocesan catechisms may be made official, in which case they must be used for catechesis taught under the bishop's authority in parishes and schools. In official catechesis, other approved catechisms may only be used as subsidiary means.[8]

c) The faithful may use any duly approved catechism in non-institutional teaching environments. They may also request authority to approve catechisms and catechetical texts of interest and have the right to obtain the approval of the contents, which must reflect the true faith of the Church and meet the universal norms applicable to catechisms.[9]

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5. Regarding diocesan catechism in the earlier law: Council of Trent, *Sess.* 24, *de ref.* ch. 7, *Sess.* 25 *de indice et catechismo* (MANSI, *Sacrorum conciliorum nova et amplissima collectio*, v. 33, Graz 1961, cols. 160 and 194); PIUS IX, Enc. *Nostis et nobiscum*, December 5, 1849, nos. 28–30 (GASPARI, *Fontes*, v. 2, pp. 847–848). As regards the history of the catechism one should take account of the work done by Jean Gerson (1363–1429), developed from the various catechetical manuals, the work of Erasmus, who, in 1514, published a kind of titular catechism, *Christiani hominis institutum*, and finally that of St. Peter Canisius who, in 1555 published his *Summa doctrinae christianae*. In 1566 the Catechism of the Council of Trent was published: *Catechismus ex decreto concilii Tridentini ad parochos Pii V iussu editus*.

6. Regarding the revision and approval of the catechism, cf. *GCD* (1997), 131, 283–284.; SCDF, Decr. *Ecclesiae pastorum*, March 19, 1975, in *AAS* 67 (1975), pp. 281–284; PCIDSVC, *Reply* June 25, 1980, in *AAS* 72 (1980) p. 756.

7. Cf. SCDF, *Reply* July 7, 1983, in *AAS* 76 (1984), pp. 47–49.

8. Ibid.., p. 52.

9. Ibid., p. 46.

d) Each bishop's doctrinal responsibility in his diocese, expressly catechetics, is so fundamental that the Holy See has stated that if a national catechism approved by the Holy See exists, each bishop may declare other catechisms to be official texts for his diocese. The reasons why several catechisms may exist simultaneously are: "In his own diocese, each Bishop, by virtue of 'ius divinum,' directly exercises the power to teach (*munus docendi*). For his diocese, he is therefore the supreme authority responsible for catechesis subject to the norms of the Apostolic See."[10] Further, it should be remembered that the teaching office, by its very nature, is not exhausted in a single act; a catechism, no matter how well it presents and systematizes doctrine, can always be improved or supplemented.

The canons do not say anything about the contents of catechisms, but from the earliest centuries the basis of catechesis has been the passing on the symbol of the faith and Sunday prayers. When an explanation of the ten commandments and the sacraments were added, we encounter the topics into which faith and Christian life have been distilled.

10. Regarding the clergy's obligation to accept responsibility for catechetics, according to the earlier law: cf. BENEDICT XIV, Const. *Etsi minime*, February 7, 1742 (GASPARRI, *Fontes*, v. 1, no. 324, pp. 715–720); *cc.* 476 § 6, 1333 and 1334 of *CIC*/1917.

776 **Parochus, vi sui muneris, catecheticam efformationem adultorum, iuvenum et puerorum curare tenetur, quem in finem sociam sibi operam adhibeat clericorum paroeciae addictorum, sodalium institutorum vitae consecratae necnon societatum vitae apostolicae, habita ratione indolis uniuscuiusque instituti, necnon christifidelium laicorum, praesertim catechistarum; hi omnes, nisi legitime impediti, operam suam libenter praestare ne renuant. Munus parentum, in catechesi familiari, de quo in can. 774, § 2, promoveat et foveat.**

By virtue of his office, the parish priest is bound to ensure the catechetical formation of adults, young people and children. To this end, he is to avail himself of the help of clerics attached to the parish, as well as of members of institutes of consecrated life and of societies of apostolic life, being mindful of the character of each institute; and the assistance of lay members of Christ's faithful, especially catechists. All of these, unless they are lawfully impeded, are not to refuse to give their labours willingly. The parish priest is also to promote and to foster the role of parents in the family catechesis mentioned in Can. 774 § 2.

SOURCES: cc. 1330–1334; SCCouncil Litt. circ., 31 May 1920 (*AAS* 12 [1920] 299–300); PIUS PP. XI, m. p. *Orbem catholicum*, 29 Jun. 1923 (*AAS* 15 [1923] 327–329); SCCouncil Litt. circ., 24 Jun. 1924 (*AAS* 16 [1924] 332–333); SCCouncil Decr. *Provido sane*, 12 Jan. 1935, I–III, 4 (*AAS* 27 [1935] 150–151); PIUS PP. XII, Alloc., 6 Feb. 1940; IOANNES PP. XXIII, Alloc., 10 Feb. 1959; PAULUS PP. VI, Alloc., 12 Feb. 1964; *LG* 28, 29; *CD* 30, 35; *PC* 8; *AA* 3, 10; *PO* 4–9; *EN* 68–71; *CT* 64–67

CROSS REFERENCES: cc. 213, 217, 256 § 1, 528 § 1, 529 § 2, 673, 773, 774, 777, 780, 785, 843, 914

COMMENTARY

José A. Fuentes

Canon 776 and the following canon list the duties of parish priests that are related to catechetical instruction. These duties are defined in greater detail under the relevant norm.

1. *Duties of the parish priests*

The catechetical responsibility of parish priests is extremely important. Duties related to this function are most serious and most clearly defined in the law. One of their fundamental duties is to ensure that catechesis is taught in their parish. This does not mean that parish priests themselves have to teach the catechism, but rather that since they are responsible for organizing the parish catechesis, they will do so by asking everyone for help who is able to assist with this task. This catechetical duty of parish priests, expressly including responsibility to organize different catechetical classes, is subject to diocesan norms. These various catechetical efforts may be divided into two basic types: catechetical classes by age groups and catechetical preparation for receiving the sacraments.

With respect to catechesis by the age of the faithful, the canon expressly mentions three different groups: adults, youth, and children. Adult catechesis has been described by John Paul II as "the foremost form of catechesis" (*CT* 43). Pastors are increasingly striving for continuous catechesis of adults rather than limiting this instruction to certain times during Christian life.

Canon 776 suggests for catechetical activity that parish priests are to collaborate with the faithful. It specifically directs parish priests to use the assistance of other clerics assigned to the parish, members of institutes of consecrated life, and the laity, especially catechists (cf. EdM, *Premiss*). That is to say, any of the faithful, to the extent of their abilities, may assist parish priests to fulfill their catechetical responsibility.

Catechesis is so important that c. 776 states that the faithful may only be excused from assisting parish priests with this task if they are legitimately prevented. Let us explain the meaning of this obligation: the faithful will naturally esteem this ministry; however, universal law does not stipulate a juridical duty to take active part precisely in the catechetical classes taught at their parish. The phrase "omnes ... operam suam libenter praestare ne renuant" urges the carrying out of moral obligation. It is a juridic duty only for those of the faithful who, by virtue of being sacred ministers, may be obligated and "must faithfully carry out any task assigned them by the Ordinary" (c. 274 § 2).[1]

However, the faithful as such enjoy true freedom, which logically has certain limits in particular norms whose purpose is to make the ministers' work more effective and to coordinate apostolic initiatives. Although the historical trend is toward placing fewer limits on both general Christian education and expressly on what is referred to as receiving and sharing catechesis, "it would not be consistent for the particular law (which cer-

1. Cf. S. PIUS X, Enc. *Acerbo nimis*, April 15, 1905, in ASS 37 (1904–1905), pp. 614–625; SCDS, Decr. *Quam singulari*, August 8, 1910, in *AAS* 2 (1910), pp. 581–582.

tainly may go beyond universal law in setting those limits) to plow fields already sown with excessive requirements for certain official instructional materials.[2] This would be just one more step toward monopolizing and officializing the entirety of ecclesial life rather than encouraging the faithful to have a true spirit of service. In this instance, this would result in a failure to understand that the people of God 'have the freedom and equality of the children of God' (*LG* 9). Church law must be a law of freedom, limiting the freedom of the faithful only to the extent that it is absolutely necessary for the common good of the Church."[3]

The last sentence of c. 776, which states that parish priests should promote and foster *family catechesis*, illustrates the value for the Church of catechesis performed by the faithful as the fruit of their freedom and co-responsibility. If parents wish to teach their children the catechism or have others do so, they are fully entitled to do so and cannot be prevented, nor can they be required to provide additional instruction, unless it can be shown that they have taught errors or have taught insufficiently.[4] Further, the parish's mission should be to supplement and complete family catechetical teachings "and help families improve every day at their task."[5] In any case, ministers always have the obligation to assess the effectiveness of the formation received before administering the sacraments (cf. c. 843).

The word "catechists" appears in this canon. This term has a broad use that is applicable to anyone teaching catechetics. It also has a narrow use to describe the faithful who are designated as catechists by parish priests, following their preparation (see commentary on c. 780).

The duties of parish priests as given in this canon, like other rights and duties stipulated in the Code, are also incumbent upon military chaplains (cf. *SMC* 7).

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2. C.J. ERRÁZURIZ M., *Il "Munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 75–76; cf. J. HERVADA, "La ley del pueblo de Dios como ley para la libertad," in *Persona, verità e morale (Atti del Congreso Internazionale de Teologia morale)* (Rome 1987), pp. 379–393.

3. Cf. R. NAZ, "Catéchisme," in *Dictionaire de Droit Canonique*, t. 2 (Paris 1937), col. 1422.

4. *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "La Catequesis de la Comunidad. Orientaciones pastorales para la catequesis en España hoy," in *Documentos colectivos del Episcopado español sobre formación religiosa y educación*, t. 2 (Madrid 1986), no. 275, p. 941.

5. *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "El catequista y su formación. Orientaciones pastorales," in *Documentos colectivos del Episcopado español sobre formación religiosa y educación*, t. 2 (Madrid 1986), pp. 1135–1136.

2. *Priests' catechetical responsibility*

Canon 776 and the next canon list parish priests' duties with respect to catechesis, and other canons in this chapter state a general catechetical responsibility incumbent upon all the faithful, a responsibility proper to parents, authority, and those specifically entrusted with the care of souls. However, this is not a responsibility that ministers possess by virtue of being ministers; c. 776 only says that ministers should assist with parochial catechesis. Thus, there is a notable difference between the preaching ministry and carrying out of catechesis. Preaching is considered a function reserved for ministers, and they have a faculty to preach because of their ordination. Catechetical activity is considered a capacity of all the faithful, which is to be exercised in quite different ways, always subject to the general oversight and authority of the Church.

The fact that everyone can catechize and the fact that the canons assign responsibility by office, particularly the office of parish priest, does not mean that the ministers' responsibility for catechesis has no special relevance. All priests, working with parish priests and developing their own initiatives, should help with catechesis (cf. c. 757). In developing catechetical work, priests, as representatives of Christ the Head, are not just one more witness: their work is "witnessing that shapes the community." The authority cannot help but report lack of communion when "groups of catechists go so far as to reject the supervision of the priest over a given Christian community in the belief that they have discovered the only valid way of teaching the faith and are not subject to the authority of the Church." Likewise, the opposite may also be reported as error: "Sometimes certain priests keep treating catechists as their mere assistants in a task they think belongs exclusively to them by right."[6]

6. Cf. A. ANTÓN, "¿Ejercen las conferencias episcopales un 'munus magisterii'?," in *Gregorianum* 70 (1989), pp. 439–440; G. GHIRLANDA, "De episcoporum conferentia deque exercitio potestatis magisterii," in *Periodica* 76 (1987), pp. 603ff.

777 **Peculiari modo parochus, attentis normis ab Episcopo dioecesano statutis, curet:**

1° ut apta catechesis impertiatur pro sacramentorum celebratione;

2° ut pueri, ope catecheticae institutionis per congruum tempus impertitae, rite praeparentur ad primam receptionem sacramentorum paenitentiae et sanctissimae Eucharistiae necnon ad sacramentum confirmationis;

3° ut iidem, prima communione recepta, uberius ac profundius catechetica efformatione excolantur;

4° ut catechetica institutio iis etiam tradatur, quantum eorum condicio sinat, qui corpore vel mente sint praepediti;

5° ut iuvenum et adultorum fides, variis formis et inceptis, muniatur, illuminetur atque evolvatur.

In a special way the parish priest is to ensure, in accordance with the norms laid down by the diocesan Bishop that:

1° an adequate catechesis is given for the celebration of the sacraments;

2° children are properly prepared for first confession and first holy communion, and for the sacrament of confirmation, by means of catechetical formation over an appropriate period of time;

3° children after they have made their first holy communion, are given a richer and deeper catechetical formation;

4° As far as their condition allows, catechetical formation is given to the mentally and physically handicapped;

5° the faith of young people and of adults is strengthened, enlightened and developed by various catechetical methods and initiatives.

SOURCES: 1°: SCCouncil Litt. circ., 23 Apr. 1924 (*AAS* 16 [1924] 287–289); *SC* 14; *GE* 4; *GCD* 25, 56–59; RCIA *Prae* 4–7; *CT* 23
2°: c. 1330; *CD* 30; EMyS 14; *GCD* 79–81, 91, et Addendum; RCIA 306–309; *CT* 37
3°: c. 1331; *CT* 38–40, 42, 45
4°: *GCD* 91; *CT* 41
5°: c. 1332; SCCouncil Decr. *Provido sane*, 12 Jan. 1935, II (*AAS* 27 [1935] 150); *GCD* 92–97; RCIA 19, 20, 98–132; *CT* 39–45

CROSS REFERENCES: cc. 775 § 1, 776, 843, 851, 865, 889 § 2, 890, 913–914, 1063–1064

COMMENTARY

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1. *Organizing various catechesis in parishes*

Having set forth parish priests' duties to organize catechesis (c. 776), certain specific catechetical activity of parish priests is now given. Among them is the catechesis that should be taught in preparation for the sacraments, an educational task that has always been especially important (§§ 1 and 2).[1] Then catechesis is to be available for adults, which has been considered very important recently, so that the catechesis has continuity and is made available to everyone (§§ 3–5).[2]

The canon's wording ("in a special way, the parish priest is to ensure") shows that it is not necessary for all the types of catechesis classes listed need to be offered in each parish. Specifically, these that do have to be organized are determined by the guidelines given in this canon, and the provisions of other canons, expressly including canons regulating the administration of sacraments, and particular law. This canon expressly refers to diocesan norms.

2. *Catechesis preparing for or related to sacraments* (§§ 1–2)

Before administering any sacrament, ministers must provide proper preparation. Sometimes it can only be a very brief explanation, which is often the case when the Anointing of the Sick is administered, but in any case, ministers should make every possible effort to enable the faithful to take part in sacraments "with proper evangelization" (cf. c. 843, §§ 1 and 2).[3]

The norm, in addition to laying down this general obligation, stipulates that parish priests should prepare children before they receive the sacraments of Penance and Eucharist for the first time and upon receiving Confirmation (c. 777, § 2). However, the canon does not speak of a special preparation of the faithful for each of the other sacraments; however, other parts of the Code on each of the sacraments do give requirements. Thus, for example, c. 865 addresses baptism; cc. 889, 890 and 891 address confirmation; and cc. 913 and 914 are on Eucharist. More recently, catechesis on marriage (cf. c. 1063) has been added to the more traditional preparation for the sacraments of Christian Initiation.

1. Cf. cc. 1330, 1331 CIC/1917.
2. Cf. c. 1332 *CIC*/1917; and *CT*, 43.
3. Cf. *SC*, 19 and 35; *IOe*, 19; *CT*, 23.

With respect to catechesis for children in preparation for receiving the sacraments of Penance and Eucharist for the first time (cf. c. 772, § 2), the practice of allowing children to take their first communion without having first gone to confession has been expressly disapproved on several occasions. For example, a 1973 Declaration by the Holy See stated that experiments contrary to the custom of administering first communion to children only after the sacrament of Penance has been administered must be stopped. In fact, c. 914 requires this sequence of administering the sacraments.[4] The reason for this canon is not the children's sinfulness, since "its purpose is educational and pastoral": the point is to educate children in the "true meaning of sin, including venial sin, and the need to ask God for forgiveness and above all, in a loving, trusting surrender to the Lord's mercy."[5]

3. *Continuity of catechesis. Catechesis for adults* (3°–5°)

Canon 777, 3° stipulates that the catechesis of children should continue after their first communion. Parish priests should therefore ensure that catechetical instruction does not stop with the administration of the sacraments by offering the faithful broader and deeper catechesis. Further, priests should offer catechesis *for adults*, or more precisely, "various catechetical methods and initiatives," of instruction in the faith, as no. 5° of the canon states. The methods are left very general because the canon was written to encourage catechesis regardless of the methods used. It seems that a lesson was learned from requiring adult catechesis earlier, in c. 1332 of the *CIC*/1917, which, perhaps because it was understood so inflexibly, was not as effective as had been hoped.[6]

4. *Catechesis for the mentally challenged* (cf. 4°)

Catechesis for the mentally challenged is a result of current pastoral concern for reaching everyone.[7] This catechesis must be offered to the extent that the mentally challenged among the faithful can understand it. This is one of the pastors' true duties, since all who have been baptized have the fundamental right to receive the word and the sacraments.

4. *SCCong, Directorium Catechisticum Generale*, cit., Appendix, nos. 4–5, pp. 175–176; SCDS, Decr. *Quam singulari*, August 8, 1910, *AAS* 2 (1910), p. 583; SCDS and *SCCong*, joint *Declaration*, May 24, 1973, in *AAS* 65 (1973), p. 410; SCSDW and *SCCong*, joint *Reply*, May 20, 1977, in *AAS* 69 (1977), p. 427.

5. SCDS, *Decisiones*, December 20, 1986, in *Palabra* (Documents) 23 (1987), no. 47, p. 65.

6. Regarding how catechesis is presented according to age-group, cf. *GCD* (1997)), 171–188; *CT*, 35–45.

7. Cf. *GCD* (1997), 189; *CT*, 41.

5. *Obligation to attend parish catechesis*

To what extent can the faithful be obligated to attend catechetical classes? This question was answered years ago, when this type of catechesis was being developed to its fullest. At the time, parish priests were not to administer the sacraments of Penance or Confirmation to those who had not had enough catechetical instruction.[8] It should be noted that what was being asked and is still being asked of parish priests (and of ministers in general) is that they determine whether sufficient instruction has been received, not that they require anyone to attend any given evangelizing program. The rule could not be otherwise, since what the Church wants (and which it has been given authority to do) is that people receive instruction in the faith. Thus what ministers are judging is the amount of instruction received, regardless of where the instruction was given (see commentary on c. 774).

Therefore, a parish priest could refuse to administer the sacraments to anyone who is not properly prepared and ask the diocesesan authority to determine the faithful's obligations to receive one kind or another of catechesis, thus respecting freedom of choice and the most suitable formation.

In fact, given the transcendent importance of this issue, authority should stress the duty of the faithful to obtain sufficient formation in the principal mysteries of the faith and in everything necessary for salvation.

In any case, it should not be forgotten that this canon (in the context of ministry as service) is not directly binding upon the faithful, but rather on parish priests, who are the ones who are to offer catechetical means enabling the faithful to meet their obligations (cf. cc. 213, 217 and 229).

8. SCCouncil, Decr. *Provide sane*, January 12, 1935, in *AAS* 27 (1935), pp. 149–154; SCDS, Decr. *Quam singulari*, August 8, 1910, *AAS* 2 (1910), pp. 581–583.

778 **Curent Superiores religiosi et societatum vitae apostolicae ut in suis ecclesiis, scholis aliisve operibus sibi quoquo modo concreditis, catechetica institutio sedulo impertiatur.**

Religious Superiors and Superiors of societies of apostolic life are to ensure that catechetical formation is diligently given in their churches and schools, and in other works in any way entrusted to their care.

SOURCES: cc. 509 § 2, 2°, 1334, 1381; SCR Instr. *Quantum homini*, 25 Nov. 1929 (*AAS* 22 [1930] 28–29); SCSUS Litt. circ., 20 Nov. 1939; *CD* 35; *ES* I, 37; *EN* 69; *CT* 65

CROSS REFERENCES: cc. 673, 675 § 3, 678, 681, 731 § 1, 801, 806 § 1, 1214

COMMENTARY

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Competence of consecrated faithful with respect to the catechesis

Canon 778 sets forth the *responsibility of religious superiors and superiors of societies of apostolic life* with respect to catechesis, particularly the catechesis which they should teach in their churches and apostolic work.

The canon mentions superiors, so the obligation to organize this cooperation extends to both local and major superiors. Although secular institutes and their moderators are not mentioned, it does seem that this canon would be applicable to them.

Members of institutes of consecrated life, subject to their charisms and their other obligations, are called to help with the catechetical task. To the extent they can, they should teach catechesis. At times they may do so at the initiative of the institute and at other times at a bishop's request.

Catechesis taught by the religious, if given by someone speaking publicly, may be comparable in some ways to official catechesis organized and directed by the proper authority. Therefore, once they have been established and organized, they are subject to the diocesan bishop (*CD* 35, 4; cc. 678 § 1, 738 § 2), who may even order that they be taught in the churches and oratories of the religious that are habitually open to the faithful (cf. *ES* I, 37). This does not mean that for the organization of such catechesis, religious need special approval from the ordinary of the place,

or that local authority may require the religious to give catechetical instruction outside their churches. However, this doctrine had not reached any unanimous reply on this issue before the Council.[1]

Also, with respect to the diocese's own catechesis, bishops may ask for assistance from members of institutes of consecrated life that are not exclusively committed to a life of contemplation. In these cases, moderators shall respond favorably to accept these pastoral responsibilities to the extent possible, depending on the type of institute (cf. *CD*, 35).

The relationship between the diocesan bishop and the religious, while such pastoral ministries, and specifically catechesis, are being organized, is summarized by Vatican II as follows: "whenever legitimately called upon to do apostolic work, they must carry out these duties in such a way as to be the auxiliaries of the bishop and subject to him ... Those religious institutes which are not dedicated to a purely contemplative life may be called upon by the bishop to help in various pastoral ministries. The special character of each religious institute should be taken into consideration ... All religious, whether exempt or non-exempt, are subject to the authority of the local ordinary in the following matters: ... preaching to the people; the religious and moral education, catechetical instruction ..." (*CD* 35).

In addition to churches, the canon also mentions schools directed by religious. These schools impart catechetical formation and religious instruction as such. It is important to recognize that religion instruction and doctrinal catechetical formation are not the same things. They are two separate tools for teaching very different kinds of knowledge. Both depend on the authority of the Church, but religion classes, as part of the educational curriculum, are also subject to general standards for education set by civil authorities (cf. cc. 804–806).

1. Cf. M. CONTE A CORONATA, *Institutiones Iuris Canonici*, v. 2 (Turin 1931), p. 257; S. ALONSO MORÁN, in S. ALONSO MORÁN-M. CABREROS DE ANTA, *Comentarios al Código de Derecho Canónico*, t. 3 (Madrid 1964), pp. 17–18.

779 **Institutio catechetica tradatur omnibus adhibitis auxiliis, subsidiis didacticis et communicationis socialis instrumentis, quae efficaciora videantur ut fideles, ratione eorum indoli facultatibus et aetati necnon vitae condicionibus aptata, plenius catholicam doctrinam ediscere eamque aptius in praxim deducere valeant.**

Catechetical formation is to be given by employing all those aids, educational resources and means of social communication which seem the more effective in securing that the faithful, according to their character, capability, age and circumstances of life, may be able more fully to learn catholic teaching and more effectively to put it into practice.

SOURCES: SCCouncil Litt. circ., 23 Apr. 1924 (*AAS* 16 [1924] 288); SCCouncil Litt. circ., 21 Jun. 1930 (*AAS* 22 [1930] 398–399); PIUS pp. XII, Alloc., 14 Oct. 1950; IOANNES pp. XXIII, Enc. *Princeps Pastorum*, 28 Nov. 1959 (*AAS* 51 [1959] 851); SCCouncil Litt. circ., 4 Jun. 1964; *IM* 3, 6, 13, 14, 17; *CD* 13, 14; *AG* 26; *GCD* 116–124; PCSCM Instr. *Communio et progressio*, 23 May 1971, 126–134 (*AAS* 63 [1971] 638–640); *EN* 40, 45; *CT* 17, 22, 31, 46, 51, 55

CROSS REFERENCES: cc. 761, 775, 822, 827 § 1, 831

COMMENTARY

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Catechetical tools

The catechetical tool par excellence is the catechism (cf. c. 775). But to teach catechetics all other tools and means should be used in addition to catechisms, provided they are effective in the formation of the faithful in the faith. These tools should be selected with the condition of those being catechized in mind: culture, age, lifestyle, etc., as well as the catechists' capabilities.

This canon, in addition to setting forth the *duty* of persons responsible for catechesis to *use tools of all kinds*, stipulates that they are to be adapted to the needs, and therefore to the rights, of the faithful. In adapting catechetical methods, care must be taken to consider pastoral needs, the range of instructional materials and the need for pastors to encourage the highly varied initiatives that will be proposed by the faithful.

The Universal Norms do not specify anything about these tools out of respect for the authority, which is above all to proclaim magisterially and generally coordinate and supervise the various initiatives. As far as particular norms are concerned, which would logically have the purpose of encouraging and guiding catechetical efforts, they are above all guidelines.

Given the frequency with which catechetical tools are mentioned in the canon, we may say that the *manner*, as well as the *time* and *place* of catechetical efforts, will vary. This implies a contrast with the former discipline. Thus before the Council, churches, chapels and other church and parish facilities were deemed to be the proper place to teach catechism. Some even maintained that permission from an ordinary would be needed in order to teach catechism routinely at other locations or in secular places.[1] There is no longer any doubt now that catechetical formation may be given at any location when it is opportune.

Thus, the explanation of the catechism, like any other form of explaining the word, should be given in the Church, and from the Church through all the means possible. Among these means, the *means of social communication* are of particular importance. The Church, in addition to using these means, feels called to judge them, given the fact that it is a duty of catechesis to educate Christians to discern the nature and credibility of what they hear in the media.[2]

As far as the *method* and language that should be used are concerned, pedagogical considerations will suggest organizing catechesis in various ways. However, in any case, the method selected should respect the integrity of the message and an organic and hierarchical balance that makes clear the diverse importance of what is conveyed. "The method and language used should be true tools for conveying the entirety, not just a part, of the 'word of eternal life'" (*CT* 31).

1. Cf. R. NAZ, "Catéchisme," in *Dictionaire de Droit Canonique*, t. 2 (Paris 1937), col. 1418.
2. Cf. *IM*, 3 and 16; SCCE, *Dio sommo bene*, especially nos. 95 and 100, in *EV*, 10, pp. 58–116; PCSC, Instr. *Aetatis novae*, February 20, 1992, no. 12, in *Ecclesia* 52 (1992), p. 567.

780 **Curent locorum Ordinarii ut catechistae ad munus suum rite explendum debite praeparentur, ut nempe continua formatio ipsis praebeatur, iidemque Ecclesiae doctrinam apte cognoscant atque normas disciplinis paedagogicis proprias theoretice ac practice addiscant.**

Local Ordinaries are to ensure that catechists are duly trained to carry out their office properly, namely, that continuing formation is available to them, that they have an appropriate knowledge of the teaching of the Church, and that they learn both the theory and the practice of the principles of pedagogy.

SOURCES: PIUS pp. XII, Let., 14 Sep. 1951 (*AAS* 43 [1951] 778–779); *SS* 364; IOANNES pp. XXIII, Enc. *Princeps Pastorum*, 28 Nov. 1959 (*AAS* 51 [1959] 855); SCSUS Instr. *Mentre in ogni parte*, 3 Sep. 1963; *CD* 14; *DV* 25; *AG* 15, 17; *GCD* 108–115; *EN* 73; Syn. Bish. Nuntius, 28 Oct. 1977, 14; *CT* 15, 63, 66, 71

CROSS REFERENCES: cc. 134 §§ 1 and 2, 217, 228, 229 § 1, 231, 386 § 1, 775 § 1, 785

COMMENTARY

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Catechists and their formation

The required formation of catechists is expressly addressed in this canon. We should therefore examine what is said about this formation, but first we should look more closely at who the catechists are and who the various kinds of catechists are.

1. *Catechists and their varied work*

A catechist is one of the faithful who directly provides catechetical instruction. Any of the faithful may be a catechist, and he or she may be a catechist of either of two very different kinds: one teaching at his or her personal responsibility or one performing a catechetical mission given him or her by the proper authority. The second kind of catechist is properly part of the official and public catechesis of the Church.

With respect to catechists performing the task of unofficial catechesis, there are no further juridic requirements beyond the general ones

applicable to catechesis, since unofficial work depends to a large extent on free will. The requirements on the use of catechisms and catechetical texts are an aspect that may involve greater supervision (see c. 775).

However, it is necessary to look more closely at catechists who are given a specific duty by the hierarchy. As we have seen (see commentary on cc. 759 and 773), the faithfuls' responsibility in official ministries of the word is a consequence of the fact that in certain cases the faithful receive a specific call to cooperate directly with the apostolic work of the hierarchy in addition to the general call to evangelism.

In speaking about public catechesis, we may distinguish, as the Spanish bishops do, two further kinds of catechists: permanent and auxiliary catechists.[1]

The Spanish bishops, with the Council and Code in mind,[2] consider this work of the faithful (who are often, but not always, laity) to be "a *public* service of the Church, which is official." They tell us that the faithful receive "an official mission or charge to do their assignment on behalf of the Church and in the service of their evangelizing mission"; and that "when catechists receive an official charge from authority to teach the catechesis, it may be said that they are acting on behalf of the Church. Witnessing and evangelizing inherent in the common vocation of every Christian and occasional catechesis on a given subject that a Christian may engage in at any opportunity should not in themselves be considered work on behalf of the Church, even though they are spreading the faith."[3]

This last citation distinguishes between what it means to act because one belongs to and is in communion with the Church as opposed to acting "on behalf of the Church." This is what distinguishes a catechist acting at his or her own initiative from one teaching official catechesis. But what does it mean to act "on behalf of the Church"? The faithful's responsibility does not imply that they are acting on behalf of the Hierarchy, as if they had somehow been delegated to so act. What is meant by this phrase is that the ministry of such catechists should be accepted by everyone as a public work of the Church and a work to which the Hierarchy is involved in the same sense that any authority is involved when it gives permission or authorization.[4]

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1. Cf. *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "El Catequista y su formación. Orientaciones pastorales," in *Documentos colectivos del Episcopado español sobre formación religiosa y educación*, t. 2 (Madrid 1986), no. 3, p. 1133.
2. Ibid., no. 27, p. 1148; *LG* 33; c. 228 § 1.
3. Ibid.
4. In the Code, the expression "in the name of the Church" is used in reference to public worship (cc. 246 § 2, 834 § 2), determining public duties (cc. 1108 § 2, 1192 § 1, 1282), and when speaking of juridical public persons, both generally (c. 116 § 1), and in particular (cc. 313 and 675 § 3).

However, the term *delegation* is used in a certain official document to explain the mission of these catechists[5]; in any case, it seems to us that it would be better to use this term only when a true delegation of power exists; clearly, catechists do not participate in the power of the Hierarchy.

The *importance* given to the work of permanent catechists and the fact that it is claimed that some are "full time" does not mean that the Episcopate at the present time is necessarily seeking recognition of this work as a *formally constituted Ecclesial ministry.*[6]

The existence of full-time catechists makes it necessary to consider the circumstances in which they may have a right to *remuneration.*[7] If they work full time, they have a right to remuneration consistent with their status, depending on the work they do and provisions related to this "service" or "office," and this is the term we can use in this case, since it is commonly used. But in principle, there is no right to be supported or paid by the Church arising from the mission of teaching catechetics, whether it is generic or specific, or whether or not the "ministry" of catechist is conferred, if it is determined to be a ministry.

Finally, we should examine the formal instrument by which a catechist receives an official call. Currently, this charge or *mission* is received by catechists informally; at least, there is no requirement in universal law. In the majority of cases, it is the parish priests who call catechists and to whom catechists report, and there is no special formality for doing so. In some places, particularly in areas where there are many adult converts, greater importance is given to the task of catechists,[8] including norms that catechists be publicly appointed on the bishop's behalf. This is done in a liturgical ceremony.

2. *Duty of local ordinaries to prepare catechists*

"Careful preparation is necessary for everyone working in evangelism. It is even more so in the case of everyone dedicated to the ministry of the word ... Everyone knows that the art of speaking has enormous importance nowadays. How can preachers and catechists ignore this? Let us energetically encourage the bishops of particular churches to ensure proper formation of all ministers of the word" (*EN* 73).

The right and duty of catechists to be trained (cf. c. 231 § 1) have their counterpart in the *duty* set forth in c. 780: *local ordinaries* have the

5. Cf. *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "El Catequista y su formación...," cit., no. 87, p. 1185.
6. Cf. ibid., no. 30.
7. Cf. cc. 230 § 1 and 231 § 2; J. HERVADA, commentary on c. 231, in *Pamplona Com.*
8. Cf. *Comisión Episcopal de Enseñanza y Catequesis de la CEe*, "El catequista y su formación...," cit., no. 87, pp. 1185–1186.

obligation to offer proper formation to catechists. This formation not only entails proper theological formation, but should also include preparation in the tools necessary to teach catechetics. The canon thus speaks not only of doctrinal formation; it also speaks in general of formation in "the discipline of pedagogy."

The canon also states that the formation to be provided by local ordinaries must be *continuous*. In this way, catechists are kept up to date on both the magisterial teachings of the faith and teaching methods. In order to do this, it would be advisable to have *catechetical schools* or *institutes* whose purpose would be to provide this specialized formation.[9] These initiatives originated in the parochial catechists' schools whose creation was ordered by the Sacred Congregation of the Council[10] some time ago. With respect to these formation tools, John Paul II, although referring to the *ad gentes* mission, requested "the strengthening of schools for catechists that are approved by Episcopal Conferences and give certificates that are officially recognized by the Conferences" (*RM* 73).

Special catechetical formation is also given in seminaries in addition to these institutes for catechists. And under c. 785 § 2, catechists assigned to missions are to receive special preparation.

9. Cf. *CT* 71; Cf. also *GCD* (1997), 248–252.

10. Cf. SCCouncil, Decr. *Provide sane*, January 12, 1935, in *AAS* 27 (1935), p. 151, where reference is made to the letter directed to the Ordinaries of Italy on April 12, 1924, in *AAS* 16 (1924), pp. 287–289.

TITULUS II
De actione Ecclesiæ missionali

TITLE II
The Missionary Activity of the Church

781 **Cum tota Ecclesia natura sua sit missionaria et opus evangelizationis habendum sit fundamentale officium populi Dei, christifideles omnes, propriae responsabilitatis conscii, partem suam in opere missionali assumant.**

Because the whole Church is of its nature missionary and the work of evangelisation is to be considered a fundamental duty of the people of God, all Christ's faithful must be conscious of the responsibility to play their part in missionary activity.

SOURCES: PAULUS PP. VI, Alloc., 6 Nov. 1964 (*AAS* 56 [1964] 998–999); *LG* 23; *AG* 2, 35, 39; SCEP Litt. circ., 17 May 1970; PAULUS PP. VI, Alloc., 11 Jan. 1975, (*AAS* 67 [1975] 103–108); PAULUS PP. VI, Nuntius, 14 Apr. 1976 (*AAS* 68 [1976] 341–347); *EN* 9–15, 50–56; PAULUS PP. VI, Nuntius, 14 May 1978 (*AAS* 70 [1978] 345–349); *PA* 3–7, 22

CROSS REFERENCES: cc. 204 § 1, 208, 209, 211, 212 § 1, 216, 222 § 2, 225 § 1, 652 § 3

COMMENTARY

Fernando Retamal

This title, based on the Conciliar Decree *Ad gentes*, takes up the topic of missions as something arising from the very nature of the Church. Its inclusion in book III of the *CIC* stresses the priority of preaching the Gospel in missionary work, without excluding the offices of sanctifying and governing. It thereby merges this topic into the rest of the canons of the Code, which is to be applied consistently, following the pace of the

local implantation of the Church. The Church, "obedient to Christ's command and moved by the love and grace of the Holy Spirit, the Church makes herself fully present to all men and peoples in order to lead them to the faith, freedom, and peace of Christ by the example of her life and preaching, by the sacraments and other means of grace ..." (*AG* 5, 1).

The opening canon lists the fundamental elements that will be addressed in the other canons in this title:

1. The missionary nature of the Church
2. The duty to evangelize
3. Participation in missionary work

1. *The missionary nature of the Church*

This statement, which serves as a backdrop for the topic, originates in Vatican II ecclesiology and is expressly taught (*AG* 2, 1) as flowing from the overall understanding of the Church as the universal sacrament of salvation in Jesus Christ; it is not a reality engrossed in itself, but is eternally open to the missionary dynamic. The Church has been sent to the world to be a witness and to spread the mystery of communion, which is its reason for existing: to reunite the entire world and everyone in Christ (cf. *Communionis notio*, 4).

2. *The duty to evangelize*

As a fundamental duty of the people of God, as the legislator points out, this duty originates in the participation by everyone who has been baptized into Christ and in the vocation arising to carry out, each one according to his possibilities, the mission God has entrusted to the Church in the world (c. 204 § 1).

This duty, referred to here institutionally as all the people of God, is related both to the fundamental Juridic statute of the Christian faithful (particularly in cc. 208, 211 and 216) and to specific forms of participation that are unique to each of the various ministries, charisms and functions in the Church, which are included in the final wording of this canon. Such diversity of contribution to the common evangelizing effort lends a broader scope to the heading of book III of the *CIC* ("The Teaching Office of the Church"), since it cannot be reduced simply to the function of the hierarchical magisterium.

The priority of evangelization constitutes the grace and vocation of all the baptized, "a people set apart, that you should show forth the praises of Him who called you out of darkness into His marvelous light"

(I Pt 2:9), or in the words of Vatican II, a "messianic people ... whose purpose is to spread the kingdom of God ever more widely, which was begun on earth by God himself ..." (*LG* 9, 2). Consequently, it requires the first duty of communion (c. 209) with:

— The Holy Spirit, which is the source and inspiration of the witness that all of us who are baptized are called to give of Jesus Christ (Jn 15:26–27);

— The pastors, who are here to govern the Church (Acts 20:28) and further the unity of the apostolate;

— The community of all the faithful, recognizing and integrating in love everyone's charisms and functions, which are to be ordered for the good of people and the building up of the Church (*AA* 3).

A clear understanding of the actual condition of the contemporary world is also needed, since this is not the sole responsibility of pedagogy, but an evangelical responsibility, where the yeast is called upon to make the dough rise.[1]

Pressing challenges to evangelization that should be noted include secularism, the new forms atheism is taking, and the fact that the majority of humankind is marginally part of the mission of the Church of Christ.

Given the many objections that are raised, it clearly seems that the mission is a problem of faith, an indicator of Christians' faith in Christ and His love for us. True salvation of all people is not limited to their material needs, however important and worrisome they may be and demanding of a response from Christians (cf. c. 222 § 2). The newness of life in Jesus Christ is the "Good News" for people of all times; all people have been called to and are destined for it. In fact, everyone is looking for it, although at times in confusion, and everyone has the right to know the value of this gift and the chance to obtain it (cf. *RM* 11).

3. *Participation in the missionary effort*

Missions include above all the most typical phase of evangelization, which is the first proclamation of Jesus Christ and building up the Church where it was not previously known. It is expressly directed at non-Christians.

Participation by all the faithful without distinction is urged by the legislator with the words, "conscious of their responsibility" (cf. cc. 212 § 1 and 652 § 3), which lend it special weight.

1. Cf. PAUL VI, Alloc., January 11, 1975, in *AAS* 67 (1975), pp. 103–108.

This missionary activity, which is common to all the faithful, should be taken up by everyone according to the charisms, ministries and duties mentioned earlier, at both the individual and group levels, and in the communities of the Church, i.e. diocesan, parochial or any other type.

Many acts of the magisterium reflect a special calling to various vocations to become part of missionary work, based on *Ad gentes* 35–41, which is a commentary on the last part of the canon.

In the last few years, candidates for the priesthood and consecrated life have been receiving with special emphasis the basics of missionary formation for the people of God. Even if their future work is not intended primarily for evangelizing in the mission field, candidates for the priesthood should raise their own consciousness of the Church's missionary work and pastoral activities (cf. *PDV* 58–59[2]). For their part, future religious, both men and women, should develop the Church's concern, i.e., awareness that they belong to a missionary people that is not content to see the Church as a "little flock," and will not rest until the Gospel has been proclaimed to every person and the world knows that "there is no other name under heaven given among men, whereby we must be saved" (Acts 4:12) than the name of Jesus Christ.[3]

These instructions simultaneously entail a deepening by the theologians of the doctrinal concepts involved in missionary work, as well as a new perspective in theological studies.[4]

Throughout the world, the laity is being called, by virtue of their baptismal vocation in the midst of temporal realities, to witness to their faith in their family, in their profession, and in other social contexts. Practicing their profession as a Christian experience is in itself a valid witness, at times the only witness possible at first, when they are the only ones through whom Jesus and the Gospel can be known (c. 225 § 1). The time will come when others, "seeing their good works" (Mt 5:16), will begin asking these Christians and themselves about the source of their lifestyle. Inspired by missionary zeal, they will clearly proclaim Jesus, either in private conversations or in a "sincere, on-going dialog" (*AG* 11) out of friendship and congeniality. Sometimes a systematic proclamation of the Christian message will be possible by teaching at educational centers or through the media. Assisting with the missionary effort has many specific applications, depending on each given situation, and varies with the

2. Cf. also, SCEP, Letter to the President of the Episcopal Conferences "Puisque la 'Ratio'" (May 17, 1970), regarding the missionary formation of future priests, in *Bibliographia missionalia* 34 (1970), pp. 217–219.

3. Cf. CICLSAL, Directive norms *Potissimum institutioni*, February 2, 1990, no. 24, in *AAS* 82 (1990), p. 489.

4. SCEP, "Rapporti tra la Chiesa universale e le Chiese particolari, tra la Sacra Congregazione per l'evangelizzazione e le Conferenze Episcopali dal punto di vista missionario," April 24, 1971, *in Bibliographia missionalia* 35 (1971), pp. 192–197, I, B.

characteristics of the communities, in formation efforts in mission fields as well as places where teaching centers are well established.

Assistance with missionary work takes the form of prayer, sacrificial offerings for world evangelization, financial contributions, and furthering pontifical missionary programs (cf. c. 585 § 4 *CCEO*).

782 **§ 1. Suprema directio et coordinatio inceptorum et actionum quae ad opus missionale atque ad cooperationem missionariam pertinent, competit Romano Pontifici et Collegio Episcoporum.**

§ 2. Singuli Episcopi, utpote Ecclesiae universae atque omnium Ecclesiarum sponsores, operis missionalis peculiarem sollicitudinem habeant, praesertim incepta missionalia in propria Ecclesia particulari suscitando, fovendo ac sustinendo.

§ 1. The Roman Pontiff and the College of Bishops have the responsibility for the overall direction and coordination of the initiatives and activities which concern missionary work and cooperationo.

§ 2. Being charged with responsibility for the universal Church and for all the Churches, all Bishops are to have a special solicitude for missionary activity, especially by arousing, fostering and sustaining missionary initiatives in their own particular Churches.

SOURCES: § 1: c. 1350 § 2; *LG* 23; *AG* 6, 29; *REU* 82; SCEP Instr. *Quo aptius*, 24 Feb. 1969 (*AAS* 61 [1969] 276–281); *PA* 3–7, 19
§ 2: BENEDICTUS pp. XV, Enc. *Maximum illud,* 30 Nov. 1919 (*AAS* 11 [1919] 451–454); PIUS pp. XI, Enc. *Rerum Ecclesiae,* 28 Feb. 1926 (*AAS* 18 [1926] 67); PIUS pp. XII, Enc. *Evangelii Praecones,* 2 Juno. 1951 (*AAS* 43 [1951] 497–528); PIUS pp. XII, Enc. *Fidei donum,* 21 Apr. 1957 (*AAS* 49 [1957] 237); *LG* 23, 24; *CD* 6; *AG* 6, 38; *ES* III, 3–11; SCEP Normae, 24 Apr. 1971; PAULUS PP. VI, Nuntius, 22 Oct. 1972 (*AAS* 64 [1972] 729); *DPMB* 46; *PA* 4

CROSS REFERENCES: cc. 330–334, 336–341, 747, 756

COMMENTARY

Fernando Retamal

This canon embodies a complete change compared to its counterpart (c. 1350 § 2) in the *CIC*/1917, which reserved all oversight of missions to non-Catholics exclusively to the Holy See.

The text now openly mentions missionary work, properly placed in the preceding canon, and cooperation with it.

1. The supreme management and coordination of missionary initiatives and activities are incumbent upon those who continue to hold the mission entrusted to Christ uniquely to Peter (the Roman Pontiff) and the Twelve (the College of Bishops).

The development of missionary work throughout the life of the Church had its source of inspiration and drive in the concern of Peter's successor for the entire Church. Thus it was that Augustine was sent to the people of Britain, Boniface to the Germans, Wilibrod to the Dutch and Frisians, etc.[1] The New World and regions of the Far East were evangelized at the beginning of the modern age. The great encyclicals of this century are also a witness of this: they are cited among the sources of this canon, to which may be added John Paul II's *Redemptoris Missio* and his apostolic trips throughout the world.

The CEP, founded as the SCPF by the Apostolic Constitution *Inscrutabili* (June 2, 1622) of Gregory XV, exercises its functions in the service of this great responsibility. Number 29 of Vatican II's *Ad gentes* decree lists its areas of responsibility; this area of competence is now described by *Pastor bonus* 85–92. According to this document, the CEP is to "manage and coordinate worldwide efforts to evangelize peoples and missionary cooperation" (*PB* 85), excluding the CEC's area of competence, which consists of the regions where eastern rites have prevailed since ancient times, even if missionary work is being done by the Latin Church's missionaries (*PB* 60).

It is the "administrative instrument and body of dynamic management" (*AG* 29) of the many different facets of missionary work throughout the world. In addition to the composition in common with other congregations of the Roman Curia, they form part of the CEP with the ex officio regular members including the Presidents of the Pontifical Councils for promoting Christian Unity, Culture and Interreligious Dialogue, prelates of the missions and other regions, superiors of men's missionary institutes and directors of pontifical missionary work are also members.[2]

In accordance with Vatican II's directives, this congregation directs and assists missionary activities on two levels:

a) On a theoretical and scientific level, it supports theological, spiritual and pastoral research on missionary work;

b) On a practical, managerial and executive level, it sets working principles and guidelines within its area of competence that are designed to meet the needs inherent in the missions, adapting them from time to time, depending on times and places. Subsequently to the Council, it has issued important documents, among which is the Instructions *Quo aptius*

1. Cf. LEO XIII, Enc. *Grande munus*, September 30, 1880, in *ASS* XIII, 145.
2. Cf. SCEP, Instr. *Cum in Constitutione*, February 26, 1968, in *Bibliographia Missionalia* 31 (1967), pp. 169–172.

(24 February1969)[3] concerning bishops' cooperation with pontifical missionary work and local diocesan missionary initiatives and *Relationes in territories*, of the same date, on the principles and guidelines for the relationship between local Ordinaries and missionary institutes in mission fields.[4]

2. Missionary work is part of the concern which bishops, as members of the College of Bishops and legitimate successors of the Apostles, together with the Roman Pontiff, should have for the entire Church, by the institution and the mandate of Christ (cf. *LG* 23). This text gives them the title of "sponsores"—guarantors (of the apostolic faith)—of the universal Church and of all the churches, since the College of Bishops, of which they are members in hierarchical communion, has forever maintained the apostolic body (c. 336).

One special way of taking on this common universal responsibility by bishops is to awaken the mission consciousness of the faithful in their churches. Each individual church is part of the universal Church, participates in its nature and missionary vocation, and should perfectly reflect the image of the universal Church (*AG* 20).

If a bishop, as pastor of his church, is to have particular concern for those not reached by ordinary pastoral care, the non–practicing and the non-baptized (c. 383 §§ 1 and 4; see also c. 528 § 1), it is his task to stimulate each of the faithful and each community and institution of the diocesan church to do "their part" in the missionary work of the entire Church.

The legislator points out some of the peculiar forms of this responsibility in c. 791.

The fact that the bishops' conferences are not expressly mentioned in this canon, as they are in *Ad gentes* 31 and 38, does not prevent them from helping to coordinate each bishop's responsibility for missionary work; however, they have no power to issue general decrees (c. 455) on this matter.[5] *Ecclesiae sanctae* III, 9 pointed out that the bishops' conferences should have a special commission of bishops for the missions to encourage various mission activities, especially pontifical missionary works, which should be constituted in all dioceses. This commission is to ensure "relationships with the other bishops' conferences and determine guidelines for maintaining equity, insofar as possible, in mission assistance." Greater unity and effectiveness will be achieved if the bishops use a regional or national mission council, consisting of directors of pontifical missionary works and representatives of missionary institutes in a given region or country (*ES* II).

3. Cf. *AAS* 61 (1969), pp. 276–281.
4. Ibid., pp. 281–287.
5. *Comm.* 15 (1983), p. 99.

Part III of *Ecclesiae sanctae*, which was intended to implement the conciliar decree *Ad gentes*, stated as one of the CEP's purposes promoting coordination of the bishops' conferences in the missions along sociocultural regions (*AG* 22) and assigning them various objectives in order to shape, including innovative ways, the apostolate and to take part in human groups, theological studies, and research on various religious concepts to provide the framework necessary for timely adaptations that should be made, taking into account, among other things, methods of evangelization, liturgical forms, religious life and Church legislation (cf. *ES* III, 18). This coordination task also involves the other bishops' conferences in areas related to mission cooperation, provided that the dicastery itself has issued timely directives.[6]

On this point, two other factors related to the contents of this canon should be kept in mind:

— as *Ad gentes* 29 provided, the Synod of Bishops should consider the issue of evangelization in today's world. As a corollary to such discussions, Paul VI's Apostolic Exhortation *Evangelii nuntiandi*, provided guidelines for proclaiming the Good News in full harmony with the conciliar magisterium. This document has made a valuable clarification and contribution to the missionary effort in the world.

— there has been a growing awareness in the last few years of the joint duties entailed in communion among churches for better distributing priests. A decisive contribution to this was made by Pious XII's call in the encyclical, *Fidei donum*, (one of the sources of this canon) and the collegial experience that took place during the years of Vatican II (cf. *LG* 23; *CD* 6). Several bishops' conferences have witnessed coordination and assistance bodies, including funding, to help the neediest churches. The Directive Notes, *Postquam Apostoli*, of 25 March 1980 issued by the *SCCong*[7] have been a decisive contribution to this charitable ecclesial maturity.

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6. SCEP, "Rapporti tra la Chiesa universale e le Chiese particolari, tra la Sacra Congregazione per l'evangelizzazione e le Conferenze Episcopali dal punto di vista missionario," April 24, 1971, in *Bibliographia missionalia* 35 (1971), *passim*.

7. Cf. *AAS* 72 (1980), pp. 343–364.

783 **Sodales institutorum vitae consecratae, cum vi ipsius consecrationis sese servitio Ecclesiae dedicent, obligatione tenentur ad operam, ratione suo instituto propria, speciali modo in actione missionali navandam.**

Members of institutes of consecrated life, because of the dedication to the service of the Church deriving from their very consecration, have an obligation to play a zealous and special part in missionary activity, in a manner appropriate to their institute.

SOURCES: *LG* 44; *PC* 20; *AG* 15, 18, 23, 27; *ES* III, 10–12: *MR* 19; *PA* 6; *EN* 69

CROSS REFERENCES: cc. 573 § 1, 758, 790 § 1,2°, 790 § 2

COMMENTARY

Fernando Retamal

The next three canons (783–785) have to do with the major persons who, hierarchically subordinate to the Roman Pontiff and the bishops, contribute in diverse ways to missionary efforts.

1. First mentioned are members of institutes of consecrated life (c. 783), i.e., persons in religious or secular institutes (book I, pt. III, sec. I) who profess evangelical counsels, either by vows (c. 654) or by other sacred bonds, which may also be possible in secular institutes (cc. 711–712).

All of them give *a*) a basis and *b*) a specific description of the general duty set forth in c. 781.

a) *The basis* is that in virtue of their very consecration, they devote themselves to the service of the Church (c. 590 § 1). It should be noted, however, that this basis also extends to the order of consecrated virgins (cf. c. 604) and societies of apostolic life, which are not mentioned in this canon.[1]

This consecration means a radicalization of the common vocation of all the faithful, who by virtue of baptism are called to carry out the mission God entrusted to the Church in the world (c. 204 § 1).

1. Cf. *Comm.* 15 (1983), pp. 93 and 99.

In a life of profession of evangelical counsels in institutes of consecrated life, the Church recognizes itself as a disciple following the footsteps of its Master and Lord and as a depository of the mission that has been entrusted to her: "Since this mission continues and, in the course of history, unfolds the mission of Christ himself, who was sent to evangelize the poor, then the Church, urged on by the Spirit of Christ, must walk the same road Christ walked, a way of poverty and obedience, of service and self-sacrifice even to death, a death from which he emerged victorious by his resurrection" (*AG* 5, 2). Thus, "this state constitutes a closer imitation and an abiding reenactment in the Church of the form of life which the Son of God made his own when he came into the world to do the will of the Father and which he explained to the disciples who followed him" (*LG* 44, 3).

Consecration, as an election by God and as dedication by an individual, implies *mission*: two aspects of the same reality, in imitation of Christ, "him whom the Father consecrated and sent into the world" (Jn 10:36). In fact, since the evangelical counsels in a very special way unite those who profess them with the Church and its mystery therefore "to the extent of their capacities and in keeping with the particular kind of religious life to which they are individually called, whether it be one of prayer or of active labor as well, they have the duty of working for the implanting and strengthening of the kingdom of Christ in souls and for spreading it to the four corners of the earth." (*LG* 44).[2]

A consequence spontaneously flows from this: "The missionary spirit must absolutely be preserved in religious institutes and must be adapted to modern conditions, in keeping with the character of each, so that the preaching of the Gospel to all nations may be more effective (*PC* 20, 2)."

As regards implanting the Church, the Council stresses that "men and women religious, likewise, play an indispensable role in planting and strengthening the kingdom of Christ in souls, and in the work of further extending it, both by their prayers and active work" (*AG* 15, 9). Religious life in its manifold forms should be established there, because it calls attention to the various aspects of Christ's mission (cf. c. 577), the life of the Church and the intimate nature of the Christian vocation (*AG* 18).

Consecrated life in itself is a privileged means of effective evangelization. It embodies the Church as being desirous of devoting itself to the radical nature of the Beatitudes; by their life, the religious are a sign of total surrender to God, the Church and their brothers and sisters. For this reason, they assume a special importance in the area of witnessing, which is primarily in evangelization. This witnessing, "as being a challenge to the

2. Cf. *La vida consagrada y su misión en la Iglesia y en el mundo. Lineamenta*, no. 6: IX General Ordinary Assembly of the Synod of Bishops.

world and to the Church itself, can become an eloquent witness capable of touching also non-Christians who have good will and are sensitive to certain values" (*EN* 69). This witness, which they are to further through prayer and penitence, is the fundamental apostolate of all religious (c. 673).

This basis was unquestionably at the root of the invitation made by the SCPF at that time—and repeated later by Paul VI—for the lay religious and the religious of all the institutes, including institutes of cloistered life of any order or congregation, to join, individually or collectively, the Clerical Mission Union, "so that this Union, without renouncing its glorious name ..., can also properly call itself the Missionary Union of Men and Women Religious."[3]

b) *Concretely.* Members of institutes of consecrated life are to assist the Church's missionary efforts diligently, depending on the nature of each institute.

Therefore, the charismatic and juridic aspects inherent in the constitutions of each institute must be considered. Missionologists agree that the vow of obedience in itself does not entail any special obligation to be sent as a missionary "ad gentes." Certain types of institutes must be distinguished:

— orders and institutes whose legislation says nothing about direct participation in missionary work, in which case superiors have no faculty to send a member under the vow of obedience. Should the Holy See entrust any missionary territory to these orders or institutes, only those members who legitimately volunteer of their own free will may take part in the mission;

— institutes that include being sent as missionaries as one of their purposes, even if such obligation is not incumbent upon each and every member. Superiors should ensure that there is always a sufficient number of the professed religious disposed to take on a direct missionary apostolate;

— institutes that define themselves as missionary institutes and whose mission "ad gentes" is their character and defining charism. In this case, all the professed are obligated, without exception, to give their services to the missions, if their superiors so assign them.

2. Vatican II, in bringing to mind the contributions to the missions from consecrated life, mentions institutes of contemplative life first (c. 674), which "with their prayers, acts of penitence and tribulations" contribute greatly to the conversion and perseverance of those hearing the

3. SCPF, Decr. *Huic sacro*, July 14, 1949, in X. OCHOA, *Leges Ecclesiae post C.I.C. editae*, II, no. 2063; cf. PAUL VI, Let. *Graves et increscentes*, September 5, 1966, in *AAS* 58 (1966), pp. 750–756.

Gospel for the first time. They are invited to found houses in mission lands and genuinely adapt to the religious traditions of those peoples. The contemplative life is part of the fullness of the Church's presence, and its witness is of primary importance (*AG* 18; 40), especially where religions greatly respect this type of life through asceticism and a search for the Absolute.

3. An urgent invitation is extended to the institutes of active life (c. 675), whether or not they have a strictly missionary purpose, so that they can extend their presence "ad gentes," even if they have to give up other work and if they are just beginning in this field, adapt their constitutions in such a way that they still integrally reflect their founding charism (*AG* 40). John Paul II repeated this urgent call in his missionary encyclical, *Redemptoris Missio* (69), and it is easy to recognize it in c. 677 § 1.

In the light of the challenges posed by cultural changes and values in our times, a dynamic creativity and search for new avenues under the guidance of the Holy Spirit, who is by his very nature creative, and in harmony with the charismatic nature of religious life, are urgently necessary. In inviting all the faithful to a new evangelical effort, the Church's supreme authority has seen in this creativity and search an innate manifestation of the contribution of religious institutes to the missionary effort.[4]

4. Although the magisterial documents provided here expressly refer to the religious life, they can certainly be extended, with due modification, to secular institutes whose work, dependent on the Hierarchy "can be fruitful in many ways for the missions, especially as an example of total dedication to the evangelization of the world" (*AG* 40). By virtue of their consecration, they try to harmonize the genuine values of the contemporary world with following Christ in their secular status, so their contribution to the missionary effort takes on new features.[5]

The societies of apostolic life, which are not mentioned in this canon, will nevertheless find in it valid inspiration for their particular contribution to the missionary effort by virtue of their similarity to the institutes of consecrated life (c. 731 § 1).

4. *MR* 19; *La vida consagrada y su misión en la Iglesia...*, cit., 42–43.

5. Cf. IV CONFERENCIA GENERAL DEL EPISCOPADO LATINOAMERICANO, Santo Domingo, October 1992, *Conclusiones*, no. 87.

784 **Missionarii, qui scilicet a competenti auctoritate ecclesiastica ad opus missionale explendum mittuntur, eligi possunt autochthoni vel non, sive clerici saeculares, sive institutorum vitae consecratae vel societatis vitae apostolicae sodales, sive alii cristifideles laici.**

Missionaries, that is, those who have been sent by the competent ecclesiastical authority to engage in missionary activity, may be chosen from the indigenous population or from others, be they secular clergy, or members of institutes of consecrated life or of a society of apostolic life, or other lay members of Christ's faithful.

SOURCES: *AG* 23; *PA* 3, 7; SCEP Litt. circ., 17 May 1970, II, B

CROSS REFERENCES: cc. 204 § 1, 208, 207, 211, 231 § 1, 266 § 1, 587, 781, 791,1°

COMMENTARY

Fernando Retamal

Since the specific purpose of missionary work is "the evangelization and the implanting of the Church among peoples or groups in which it has not yet taken root" (*AG* 6), it is incumbent upon missionaries to assume this task directly and immediately. This canon describes missionaries as "those who have been sent by the competent ecclesiastical authority to engage in missionary activity."

I. IDEA

In its most fundamental original sense, the principle of the missionary function is a special vocation kindled by the Holy Spirit, who distributes charisms for the common good as he chooses (*AG* 23; *RM* 65). This missionary impulse energized by charity was described by Pius XII as the first response in gratitude to God in order to share the faith that had been received with non-Christians (cf. Enc. *Fidei donum*). Canon 791, 1° mentions the furthering of missionary vocations as the first way of missionary cooperation in particular churches.

This internal and metajuridical foundation is the basis for the Church's work: it is incumbent upon the Church as such to *choose and*

send persons directly involved in missionary work. Both elements are thus components of the state of *missionaries.*

A. *Choosing Missionaries*

In choosing missionaries, the Church faces a task of discernment, since the missionary vocation should be marked by one's suitability and natural qualities, disposition and talents, and requires a surrender that involves the entire person and his or her whole life, demanding giving without limits of time and energies and readiness to undertake missionary work (*AG* 23; *RM* 65).

1. The legislator points out two elements that regulate this choice:

a) universality of origin, since missionaries may be from mission fields or countries evangelized in former times, no distinctions are made in this chapter;

b) common duties, since, like participation in missionary activity, it is the task of everyone who is baptized (c. 781), doing missionary work directly and immediately may be in accordance with the diversity of charisms and ecclesial offices.

Both components, taken verbatim from *Ad gentes* 23, converge and are grounded on the conciliar magisterium concerning the people of God and the canonical norms arising from it (cc. 204 § 1, 208, 211, etc.). Their appearance in this title indicates a radical change of perspective compared with the prior situation.

2. In this way, according to the text of the canon, missionaries may be drawn from the secular clergy, institutes of consecrated life, societies of apostolic life or other lay faithful.

The societies of apostolic life[1] appear to be included as proper for the mission field.

Breadth and complexity underlie the list of persons provided by the legislator in c. 207. Missionaries, natives or not, may be:

a) *clerics* (c. 266 § 1):

— secular, incardinated in a particular church (cc. 368, 266 § 1) or in a military ordinariate (*SMC*, VI §§ 3–4) or in a personal prelature (cc. 266 § 1, 295);

— of consecrated life, i.e., members of religious institutes (c. 588 §§ 1 and 2) in the broad sense, which was not included as such in the *CIC*; or from secular institutes (cc. 711, 713 § 3, 266 § 3);

1. Cf. *Comm.* 15 (1983), p. 99.

— from societies of apostolic life (cc. 736 § 1, 266 § 2).

b) *Laity,* both men and women:

— of consecrated life and religious (c. 588 §§ 1 and 3) or from secular institutes (cc. 711, 713 § 2);

— from societies of apostolic life (cc. 731, 735);

— other lay faithful: those dedicated to apostolic work of a personal prelature (c. 296); by virtue of their exclusive secular vocation, married or single (cc. 224–227).

The Church recognizes and praises women's role, "who from the earliest times of Christianity appear working with and aiding missionaries in their work of apostolate" (Enc. *Maximum illud*[2]), especially the role of the missionary religious women, "in whom virginity for the sake of the kingdom is transformed into a motherhood in the spirit that is rich and fruitful" (*RM* 70).

3. Finally, it should be noted that *Ad gentes* 23 (given as a source of cc. 783–784), uses the term "institutes" in a broader sense than is the case in these canons, since it includes "the orders, congregations, institutes [secular?] and associations [societies of common life without vows, according to *CIC*/1917?] that work in the missions" (*AG* 23, note 4); it appears in the same sense in the Instruction *Relationes in territoriis.*[3]

B. *Sending Forth*

"She [the Church] puts on their lips the saving Word, she explains to them the message of which she herself is the depository, she gives them the mandate which she herself has received and she sends them out to preach. To preach not their own selves or their personal ideas (2 Cor 4:5) but a Gospel of which neither she nor they are the absolute masters and owners, to dispose of it as they wish, but a Gospel of which they are the ministers, in order to pass it on with complete fidelity" (*EN* 15).

This authoritative sending forth to do missionary work is fundamentally linked to the charge the Lord entrusted to Peter and the College of the Twelve; for this reason it is directly conferred by the Roman Pontiff or bishops in communion with him; or also mediately through ecclesial entities that have received this authority from them, which is the case of the missionary institutes: this is a generic and institutional sending forth when a competent hierarchical authority approves the constitutions or fundamental norms of such institutes (c. 587). On the other hand, a sending

2. *AAS* 11 (1919), p. 451.
3. Cf. SCEP, Instr. *Relationes in territoriis*, February 24, 1969, in *AAS* 61 (1969), pp. 281–287.

forth may be a single definite expression when superiors give their members their respective missionary assignment. This way of sending forth is also a single specific matter for missionaries that are not members of any institute.

II. CATEGORIES OF MISSIONARIES

A. *Secular Clerics*

Vatican II has been particularly solicitous in mentioning priests as being included in the same universal scope of the mission conferred upon the apostles by Christ and extended to the College of Bishops (*PO* 10). Their ministry, especially in the parochial community, is "to ensure that the faithful are concerned for the community of the parish, that they feel themselves to be members both of the diocese and of the universal Church ..." (c. 529 § 2). This inner willingness should be part of the essence of every priest, "and if any of them receive a special vocation from the Holy Spirit, they shall not be prevented from going to another diocese, with their bishop's consent, to continue their ministry" (*PA* 5).

Assigning a diocesan cleric to missionary work has a significance that transcends that of a single person: his "going" is an authentic expression of the missionary vocation of the church from which he comes from; this vocation manifests a special form of the ministry of a priest, and it therefore requires specific preparation, since the customary formation given a diocesan priest is not sufficient for missionary duties. Among the considerations that require special training are the general problem of evangelizing a non-Christian culture and the particular situation of the area where he is to exercise his missionary ministry. He ought to consider his future incorporation to a new diocesan presbyterate under a local bishop, working alongside native priests and missionaries from religious institutes.

He must deepen his understanding of mission theology and the extension of the ministry of salvation to all people, as well as a good understanding of non-Christian religions, especially the religions he will encounter.

Intercommunity centers created for this purpose by several missionary institutes, which are available to diocesan priests, can be very helpful in providing this type of training.[4]

4. Cf. SCEP, circ. Letter *Nello Studio*, May 17, 1970, regarding the vocation and special formation of future missionaries, nos. 14–15, in *Bibliographia Missionalia* 34 (1970), pp. 190–196.

It was laudable of Pius XII to awaken this missionary movement in diocesan clerics through his call to the world's bishops to make a commitment to evangelize Africa in the encyclical *Fidei donum* (April 21, 1957), which has now been extended to the entire Church (*AG* 38; *PA* 24–25). Missionaries are not to be sent forth only from churches originating from ancient evangelization, but also from younger churches, even if these churches themselves suffer from a shortage of clerics (*RM* 64).

B. *Institutes of consecrated life*

Just as God dispenses a missionary vocation to individuals among the faithful, He also encourages institutes to adopt as their own mission the duty to evangelize that belongs to the entire Church (*AG* 23).

This charism has manifested itself not only in missionary institutes themselves that were founded more recently, but also in ancient monastic families, such as the Benedictine Order[5] and mendicants such as the Franciscan Order,[6] as well as many others.

Both the Conciliar magisterium and innumerable pontifical documents abound with praise for the missionary efforts of religious of both sexes throughout the centuries and their sacrifice, even heroism, in the cause of evangelization of peoples.[7]

Once churches have been founded, even with their blood, they continue helping to care for souls and doing other tasks that are useful to the ecclesial community. Some of their new possibilities include training persons that volunteer for temporary work in the missions and taking on the task of evangelizing groups or peoples that require special approaches or whose evangelization is complicated (*AG* 27 and note).

The first missionary institutes, which arose in the ancient Christian churches, are now receiving many candidates from the new churches that are the fruit of their evangelization efforts, "not only for missionary activity *ad gentes*, in keeping with their tradition, but also for stirring up missionary fervor both in the Churches of traditionally Christian countries and in the younger Churches" (*RM* 66).

Also, in these magisterial texts the term "missionary institutes" is used in a broader than the term "institutes of consecrated life," which appears in the canons in this title.

5. Cf. Enc. *Fulgens radiatur*, March 21, 1947, in *AAS* 39 (1947), pp. 137–155.
6. Cf. Enc. *Rite expiatis*, April 30, 1926, in *AAS* 18 (1926), pp. 153–175.
7. Cf. *AG* 27; *EN* 69; *PA* 6; RM 69–70.

C. *Societies of Apostolic Life*

In the *CIC*/1917, they were mentioned as "communal societies of men or women without vows" (cc. 673–681): many of them are deserving of gratitude for their evangelizing work in the missions, which they took on as the specific reason for their founding.

In the *CIC*, by virtue of an official consultation, the CEP pointed out that such missionary societies are *ipso facto* included among societies of apostolic life (cc. 731–746)[8] and are subject to the competence of said congregation (*PB* 90 § 2).

D. *Laity*

The role of the lay faithful, both men and women, goes back to the beginnings of the Church's expansion and has manifested itself in the manifold facets that can be understood as the Christian vocation, which, by its very nature, is also called to the apostolate (*AA* 2). Further, "The Holy Spirit arouses a missionary spirit in the Church in many ways, and indeed often anticipates the work of those whose task it is to guide the life of the Church" (*AG* 29). Examples are then given of some churches and current pontifical missionary works that owe their origin and early development to the initiative of lay faithful.

Lay missionaries are defined as those who, having been "called by God ... are accepted by the bishop for this work" (*AG* 41) in the manner described by the legislator in this canon. They may be individual laypersons, for example, present in missionary fields for professional reasons or they may be part of ecclesial efforts inspired by missionary dynamics; in either case, they do not belong to missionary institutes.

1. *Ecclesiae sanctae* III, 24, laid down appropriate norms for the most relevant aspects involved in their presence and activity in missionary work. A few years later, the competent Roman dicastery, in a long document, provided guidelines for implementing this special task.[9] Both documents serve as models for the following discussion.

Lay candidates for per se missionary work should be subject to:

a) *A selection process* that reviews:

8. CEP, *Risposta ufficiale, circa la natura giuridica delle società missionarie*, May 28, 1984, in *EV, Supplementum* 1, 895–900.

9. Cf. SCEP, circ. Letter to the local Ordinaries *Notre temps*, May 17, 1970, regarding the missionary role of the laity, in *Bibliographia Missionalia* 34 (1970), pp. 197–212; also circ. Letter *Nello studio...*, cit., nos. 16–17.

— their sincere intent to serve, in different ways, but with clarity and determination, the saving mission of Christ and the Church in and with the world. Humanitarian sentiment although admirable, is not sufficient;

— health that is compatible with the missionary work they are to undertake;

— maturity of character among which are these characteristics: common sense, balance, firmness and consistency, openness to others, availability for the work, and a spirit of initiative and collaboration;

— proven professional training, both theoretical and practical;

— for those coming from abroad: a commitment to stay in the area for a sufficiently extended period of time commensurate with the nature and exegencies of the service required.

Formation for the apostolate, which includes:

— comprehensive human formation suitable to each person's condition and personality (*AA* 29) with the assistance of different collaborators;

— the spiritual and moral aspect, which provides the indispensable experience with theological virtues;

— a scientific and technical background compatible with their age and abilities. *Ad gentes* also requires sufficient knowledge of the new cultural environment of which they are to be a part: history, sociology, customs, mentality, moral and religious customs, and sufficient knowledge of the language (*AG* 26; cf. c. 231 § 1).

c) *Introduction to a new environment*, in the sense of both the local culture and the local church. The former entails an initial liking that leads candidates to identify more and more with their new social milieu, with freedom and responsible maturity, aware of their identity as lay missionaries. The latter entails manifesting themselves as children of the local church, blending their lay work in joint pastoral work subject to the local hierarchy (cf. *AA* 26; *AG* 30–31, 38). Their relationship with pastors is the same as that entailed by their lay duties, as far as strictly temporal matters are concerned (cf. cc. 225–227) or is determined by receiving some hierarchical mandate (*AA* 24; c. 228 § 1).

2. Associations are useful both in formation and in the work they will be doing, whether these associations are used to coordinate with other similar associations or those with similar purposes, especially nationally or internationally.

Lay missionaries should receive the Church's support in various ways:

a) Their home churches should consider these laypersons to be a sign of the Catholicity of their communities; they should encourage support initiatives, contact, and offer spiritual and moral support, and when

they return, they should ensure their full and easy readjustment to their national environment.

b) There should be areas at mission locations for open, constructive contact with priests, members of missionary institutes and Christian communities. Mature persons with sufficient experience should be offered the right to be given responsibilities and freedom to make decisions, especially in the area of their profession. Priests and consecrated personnel, with time and preparation, are to help them spiritually.

c) If married, they and their families should receive a fair salary and a full system of insurance (*AA* 22; c. 231 § 2) governed by a contract. Organizationally, a proper place should be reserved for them on pastoral councils in parishes and dioceses, as well as on commissions to bishops' conferences.

The scope of lay missionary work requires more and more intercommunity missionary formation centers, since a large part of the elements mentioned here have only recently become applicable, with due adaptations to the work of the various categories of missionaries, clerics and laity mentioned in this canon.

785 **§ 1. In opere missionali peragendo assumantur catechistae, christifideles nempe laici debite instructi et vita christiana praestantes, qui, sub moderamine missionarii, doctrinae evangelicae proponendae et liturgicis exercitiis caritatisque operibus ordinandis sese impendant.**

§ 2. Catechistae efformentur in scholis ad hoc destinatis vel, ubi desint, sub moderamine missionariorum.

§ 1. Catechists are to be given a role in missionary work. These are lay members of Christ's faithful who have received proper formation and are outstanding in their living of the christian life. Under the direction of missionaries, they are to present the Gospel teaching and engage in liturgical worship and in works of charity.

§ 2. Catechists are to receive their formation in schools founded for this purpose. If there are no such schools, they are to be formed under the direction of the missionaries.

SOURCES: § 1: SCPF Litt., 20 May 1923 (*AAS* 15 [1923] 369–372); IOANNES pp. XXIII, Enc. *Princeps Pastorum*, 28 Nov. 1959 (*AAS* 51 [1959] 855); *AG* 17, 26, 35; SCEP Decl., Apr. 1970
§ 2: *AG* 17, 26, 35

CROSS REFERENCES: cc. 228 § 1, 231 §§ 1–2

COMMENTARY

Fernando Retamal

The position and duties of catechists (the object of this canon) are a typical component of missionary work. Although the *CIC* mentions them in ordinary pastoral work (cc. 776, 780), it is in missionary work here that their uniqueness and importance are stressed. The magisterial documents frequently praise their labors, describing them as "irreplaceable assistance," "perhaps the most classic case of the lay apostolate" (John XXIII, Enc. *Princeps pastorum*), since "Churches that are flourishing today would not have been built up without them" (*CT* 66).

1. *Exegesis of the canon*

It can be pointed out in the description given by the legislator that:

— it refers to laypersons, both men and women (*AG* 17, 1), as opposed to missionaries (c. 784), who arise from the same communities as those being served by missionaries, and whose special charism animates them;

— their work is not autonomous, but is planned in a subordinate relationship with a *missionary*: the term should be understood in the sense given it in c. 784, even though *Ad gentes* 17 considers them to be only "effective coworkers of *the priestly order*";

— their acceptance in missionary work, as established by the legislator, embodies the function of catechists in the peculiar institutional framework of mission locations;

— their area of competence, described according to the threefold office scheme (*tria munera*), has its own essence reflecting its subordinate position: *to explain* (not to teach or preach) Gospel doctrine; *to organize* (not to celebrate or conduct) liturgical acts and charitable work;

— the requirements for obtaining this position (due instruction; an outstanding Christian life) would seem to be outstanding progress along the road undertaken by neophytes (c. 789);

— their formation (the object of § 2) is to take place *in schools* or centers *designated for this purpose*; if there are no schools, formation is to be given under the direction of *missionaries*, which raises this training to a certain institutional level that is broader than the level of functions they will exercise.

2. *Commentary*

In the first *Schema* (1977), c. 39 saw catechists as permanent "cooperators in missionary work." At the same time, on the basis of *Ad gentes* 17, the position of auxiliary catechists appeared who were consecrated to this task for a given period of time or on a part-time basis ("ad tempus aut partim"). The above mentioned text of *Ad gentes* 17, in describing their functions, provided for the possibility of granting them a canonical mission. These details, which do not appear in the text as promulgated, are therefore determined under particular law.

At the level of this function, when the canon gives requirements and their involvement in missionary work, it is a recognized given that there must be a call and authorization by the Church,[1] which elevates their work above the merely private sphere. Even though catechists are not listed

1. Cf. SCEP, "Declaración particular sobre la figura, la misión y las cualidades de los catequistas y los medios para desempeñar su ministerio," April,1970, I, no. 2, in *Bibliographia Missionalia* 34 (1970), pp. 213–216.

among *the lay ministers* in universal legislation (c. 230 § 1), several magisterial acts present catechists as such, sometimes by listing them in a continuum after priests and deacons (*AG* 15), and sometimes expressly giving them this title (*EN* 73; *RM* 73). The possibility is foreseen for bishops' conferences to request their establishment as lay ministers,[2] and *Ad gentes* 16, even opens the possibility of their ordination as permanent deacons by virtue of their task. Even when women are included and the norms on catechists may be consistently applied to them, it is noteworthy that there is no direct reference to *women* holding this position.

The CEP notes that catechists are not mere substitutes for priests, but rather witnesses in their own right to Christ and the community to which they belong. However, in addition to their duties, catechists, up to the proper limits, may fill in for, but not replace, absent priests. The way in which catechists are to perform their duties should be determined by a plan prepared by particular churches.[3] Certain specific functions may be deduced from the canons of the *CIC*:

— by virtue of their very position they are extraordinary ministers of baptism (c. 861 § 2) who have a special rite whose preparation was provided for by Vatican II (*SC* 68);

— depending on their suitability and their community's needs, they may be entrusted with other work, such as a minister of the Eucharist (c. 910 § 2), a witness qualified to assist at marriages (c. 1112), a minister of certain sacraments (c. 1168), and other roles in liturgical acts (c. 230 §§ 2–3), which does not exclude preaching, depending on the situation (c. 766).

In recent years, the work of missionary catechists whose leadership has been critical in revitalizing evangelization in vast areas has expanded in innovative ways among organizers of basic church communities, especially in Latin America.[4] Other lay work may also be similar to that of catechists in word, writing and the example of life: writers, publicists, leaders of workers' or rural movements, etc.[5]

Insofar as possible, preparation of future catechists and later stages of ongoing formation should be provided at regional centers created for this purpose and approved by bishops' conferences. Through well-designed programs, their formation can lead to a solid spiritual life with useful doctrinal and human components that are adapted to the environments for which they are intended (cf. *AG* 17). It is recommended that graduates be given official recognition by the various bishops' conferences.[6]

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2. Cf. *MQ*, August 15, 1972, in *AAS* 64 (1972), p. 531 and note 5.
3. Cf. SCEP, "Declaración particular...," cit., I, 4.
4. Cf. RM, 51; IV CONFERENCIA GENERAL DEL EPISCOPADO LATINOAMERICANO, Santo Domingo, October, 1992, *Conclusiones*, nos. 61–63, 95.
5. Cf. SCEP, "Declaración particular...," cit., I, 4; RM, 74.
6. Cf. also SCEP, "Declaración particular...," cit., II; RM, 73, 3.

Formation of catechists also falls under the competence of the CEP (cf. *PB* 88 § 2). Their temporary or permanent service to the Church, when they are required to obtain proper formation to perform their duties with generosity and diligence, at the same time gives them the right to sufficient financial remuneration enabling them to meet their own personal needs and those of their families in accordance with civil law. Required benefits, social security and health assistance must also be provided (cc. 1274 §§ 3–4; 231 §§ 1–2).

786 **Actio proprie missionalis, qua Ecclesia implantatur in populis vel coetibus ubi nondum radicata est, ab Ecclesia absolvitur praesertim mittendo Evangelii praecones donec novellae Ecclesiae plene constituantur, cum scilicet instructae sint propriis viribus et sufficientibus mediis, quibus opus evangelizandi per se ipsae peragere valeant.**

Missionary activity properly so called, through which the Church is implanted among peoples or groups where it has not yet taken root, is carried out by the Church especially by sending heralds of the Gospel, until the new Churches are fully constituted, that is, are equipped with their own resources and sufficient means so that they themselves can carry on the work of evangelisation.

SOURCES: SCPF Instr. *Quo efficacius*, 6 Jan. 1920; *LG* 17; *AG* 6 et passim; SCEP Litt. circ., 17 May 1970; SCEP Litt. circ., 17 May 1970, III

CROSS REFERENCES: cc. 787, 790

COMMENTARY

Fernando Retamal

1. *Introduction*

The topic discussed here is the culmination of the other canons in this title.

At first glance, the text discusses:

a) An activity "specifically" missionary, which implies that there are other activities that would be "not specifically" missionary:

— this action is an instrumental condition introduced by the ablative "qua" and subject to an end: by means of this activity, the Church is founded;

— the way in which it is done "principally" (therefore not exclusively) is related to c. 784: the Church ("the competent ecclesiastical authority") *sends* heralds of the Gospel,[1] that is to say, "missionaries"; those

1. Cf. the listing of documents in the *fontes* of c. 782 §2.

to whom missionaries are sent, who confer special characteristics on this activity, are peoples and groups where the Church has not yet taken root.

b) Missionary activity as described here has a provisional nature: it is to be undertaken *until* new churches are fully constituted. According to the legislator, this occurs when they have *suitable resources*, which refer to their spiritual vigor and maturity of faith and Christian life; and *sufficient means*, which implies resources of various kinds, especially material resources. Under these conditions, these new churches themselves can carry on the work of evangelization, which is an inherent mission of the Church (c. 747).

The underlying parable of "sowing" and "seed that brought forth fruit" (cf. Mk 4:1–20, 30–32) provides a basis for the two main themes of this canon: missionary action properly so-called; the fully constituted churches.

2. *Missionary action in the proper sense*

a) The missionary duty, as an expression of a purpose entrusted by Jesus Christ, "is one and the same everywhere and in all situations, although, because of circumstances, it may not always be exercised in the same way" (*AG* 6). These differences originate from situations experienced by the Church or arise from peoples, groups or individuals to whom the mission is directed. Such variations had been noted from time to time by the code commission, which as regards this canon in the 1980 *Schema* (then c. 741), noted that it could easily be concluded that there is one type of missionary activity in a broad sense and another in a narrow sense.[2]

b) Both *Ad gentes* 6 and 19, as well as *Redemptoris Missio* 33, describe situations of stagnation or regression in the Christian life of churches founded in ancient times, which has recently given rise to a call for a "new evangelization" of these churches, which is to be new "in its ardor, in its methods, in its expression." This situation only appears indirectly in the *CIC*, as regards those marginalized from ordinary pastoral care, those who are non-practicing and the unbaptized (cc. 383 §§ 1 and 4; 528 § 1; 568; 771).

c) Missionary action properly speaking—which is the only activity described in this canon and all of title II—differs from the characteristics and methods of the customary care that is given to the faithful through the care of souls through the usual diocesan, parochial and other pastoral channels in fully constituted churches (*AG* 6). It also differs from ecumenical work (cc. 755, 383 § 3, 529 § 2), which strives to restore Christian unity. There is, however, a close relationship between missionary action

2. *Comm.* 15 (1983), p. 98.

and ecumenism, since the division among Christ's disciples often weakens their witness and hinders preaching the Gospel and conversion to the faith (cf. *RM* 50 and 1). Since there is a certain ecclesial, but not full, communion with non-Catholics who are baptized (cf. *LG* 15; *UR*, 3), excluding any kind of confusion and emulation, Christians, insofar as possible, should witness to their common faith in Jesus Christ and work together in projects that further human welfare and religion.

Missionary activity properly speaking, then, takes place among peoples or groups where the Church has not yet taken root and is commonly known as an "ad gentes" mission or "plantatio Ecclesiae."

Areas where this activity is carried out are known as "mission territories" (cc. 790 § 1, 792). Having been determined canonically by the Apostolic See,[3] these territories are under the CEP's direct governance if they belong to the Latin Church (*PB* 89, 85). There, they constitute the prefectures or apostolic vicariates, which, for canonical purposes, are similar to dioceses (cc. 383, 371 § 1). The juridic system is maintained in these territories through *commission*, under which the Holy See entrusts missionary work to institutes, societies or particular churches, making this work subject to the CEP.[4] The first evangelization, as its natural task, takes place in this context and goes through the phases of the progressive consolidation of the Church through gradual change of its ways which is not exempt from tension, constantly taking pride in its originality and adaptation (*AG* 6).

d) The human leaders directly at work have already been mentioned in c. 784; their sending forth by the Church is the *principal* way of carrying out ("proper") missionary action. This way is associated with solicitude on the part of all the churches through the church's supreme authority in the manner described in c. 782 § 1 and of each bishop (c. 782 § 2), as well as participation by all the faithful in diverse ways (cc. 781, 792 §§ 2–3), as well as institutes of consecrated life (c. 783). This missionary task force must also include catechists and everyone who works, directly or indirectly, with their prayers, sacrifices, educational efforts, etc., toward establishing the Church in mission territories (*AG* 40; *RM* 69–70). The meaning of the terms "missionary" and "missionary action" thus becomes much broader. The action of the Holy Spirit must be placed at the basis of all human and canonical leadership. Since Pentecost, the Holy Spirit moves the entire Church to continue Christ's mission on earth (*LG* 17; *RM* 21, 28–29). "Even at times he visibly anticipates apostolic action, just as in various ways he unceasingly accompanies and directs it" (*AG* 4).

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3. "Missionary territories are those recognized as such by the Apostolic See" (c. 594 of the *CCEO*).

4. Cf. SCPF, Instr. *Quum huic*, December 8, 1929, in *AAS* 22 (1930), pp. 111–115; SCEP, Instr. *Relationes in territoriis*, February 24, 1969, no. 1, in *AAS* 61 (1969), p. 283.

e) The phases of the first evangelization in various cultures, societies and regions require special sensitivity, which is specifically mentioned in c. 787 (see commentary). Suffice it to point out here that, insofar as humanitarian and social advancement are concerned, missionary activity should not be contrasted (or confused) with the development of peoples, who are often in very bad socio-economic conditions. The Church has always been concerned with the material deprivations of those to whom evangelization is directed. Christians must collaborate with others in the enormous task of development (Enc. *Populorum progressio*) and missionary activity encounters a broad field of action in this effort (*AG* 12). After all, full development requires a spiritual dimension. Evangelization should ensure or advance the explicit proclamation of Jesus Christ. Thus evangelization, without prejudging methods or the time required in a given situation, must retain its identity and goal of establishing the Church, not forgetting that the Church's religious mission gives rise to functions and energies that will consolidate justice and human progress in accordance with divine law.[5]

"Plantatio Ecclesiae" requires the coordinated efforts of various ministries, priests, deacons, catechists and laity, individually and in groups, as well as religious institutes (*AG* 15, 8). Evangelization is the first priority. Special emphasis has always been made on properly preparing native clergy as an important indicator of a mature faith and a Church that has taken root (*AG* 16).

3. *Churches fully constituted*

"The Christian community should from the very start be so formed that it shall provide for its necessities insofar as this is possible" (*AG* 15, 3).

a) "Plantatio Ecclesiae," the goal of specific missionary activity, is a situation that is not easy to describe precisely in canonical terms; in fact, it is not the same as conversion of all or even the majority of the inhabitants of a missionary territory; on the other hand, since it is a living organism, one should always assume that there will be stages of gradual growth and extension of the Gospel. The elements which the legislator lists in a generic sense are expressly given in *Ad gentes* 19 and 6.

b) The Council notes that a church may be considered rooted when the congregation of the faithful, having become a part of social life and adjusted to some extent to the culture of the milieu (cf. *AG* 15), enjoys a certain stability and soundness, that is to say, when it has its own corps of native priests, religious and laity, even if insufficient, and the ministries

5. Cf. *GS* 39 and 42; *RM* 58–59.

and institutions that are necessary to conduct and strengthen the life of the people of God, under the guidance of its own bishop.

The final mention of "its own bishop" alludes to the act of constitution of a particular church, with a pastor who governs it with the ordinary, proper and immediate power that is required for him to exercise his pastoral office (c. 381 § 1), different from vicariates and apostolic prefectures which are governed in the name of the Supreme Pontiff in mission territories (c. 371 § 1). This is the critical factor, which is known as *establishment of the hierarchy* and consists of the canonical erection of ecclasiastical provinces with suffragan dioceses in areas that had been previously considered "missionary" territories (c. 431 § 3).[6]

Nothing prevents these new churches from remaining under the tutelage of the CEP for a long time, which is in fact what happens. This very situation illustrates the complexity of the canonical, pastoral and social factors variously involved in the "plantatio Ecclesiae."

The canonical erection must include the existence of native priests to ensure the celebration of the Eucharist; this, in fact, is the center of the community of faithful. (*PO* 5).[7] "Should the presence and action of its ministry ever be lacking, the Church would no longer have full certainty of its fidelity and visible continuity"[8] Together with priests from abroad, they comprise a single presbyterate for exercising pastoral care under a bishop, and their thorough ongoing formation should be ensured.[9]

When a church is fully constituted, the juridical system of *commission* ceases with respect to the persons to whom the missionary territory was entrusted and the *mandate* system begins. It consists of the special collaboration agreed upon individually among missionary institutes and the bishop over the new church, with the mandatory support offered by the CEP.[10]

The taking root of the church implies sufficient, and at the same time, dynamic maturity of the various vocations and ministries (*AG* 19–22): the faithful acquire a shared and committed awareness of the consequences arising from their baptism. The indicators that make a particular church into the visible and local presence of the Church of Christ (*CD* 11; c. 369) are found in the texts of the Decree *Ad gentes* that refer to this point (*AG* 15).

6. Cf. e.g., *AAS* 59 (1967), pp. 201–203 (southern Oceania); ibid., pp. 480–482 (New Guinea and adjacent islands); ibid. 67 (1975), pp. 164–165 (Sudan).

7. Cf. *SC* 41–42; *LG* 26; cc. 528 §2, 899 §2, etc.

8. Cf. EPISCOPAL SYNOD, Document *Ultimis temporibus*, 1971, I, 4; *PA*, 5.

9. Cf. CEP, Pastoral guide *Le giovani chiese,* October 21, 1989, for the diocesan priests of the dependent churches of the CEP, in *EV* 11, nos. 2495–2697.

10. Cf. Instr. *Relationes*..., cit., nos. 2–16.

Exceptional emphasis is given to the apostolate of the laity following insistence on the formation of native clergy: "The Church has not been really founded, and is not yet fully alive, nor is it a perfect sign of Christ among men, unless there is a laity worthy of the name working along with the hierarchy" (*AG* 21). They are to be the bridge between the people of God and the civil society of which they are a part. By virtue of their vocation of belonging to earthly realities (*LG* 31), they have to interpret creatively the Christian consequences of their family and civil commitments. In many cases, others may come to know Christ only through them (c. 225 § 1). There should be someone among them who, in cases of need, can cooperate more closely with the hierarchy (c. 228 § 1).

As a sign of ecclesial maturity, new churches should continue evangelizing those who do not know or have not accepted the Christian faith (*AG* 6, 15, 20). New situations will demand continuing vigilance and openness on the part of the bishop and priests and the constant growth of everyone in the vocation, and baptismal commitment. With regard to certain groups of people particularly resistant to evangelization, other flexible methods should be devised, such as missionary personal prelatures.[11]

11. Cf. *AG* 20 (and note); *AG* 27 (and note).

787 **§ 1. Missionarii, vita ac verbi testimonio, dialogum sincerum cum non credentibus in Christum instituant, ut ipsis, ratione eorundem ingenio et culturae aptata, aperiantur viae quibus ad evangelicum nuntium cognoscendum adduci valeant.**

§ 2. Curent ut quos ad evangelicum nuntium recipiendum aestiment paratos, veritates fidei edoceant, ita quidem ut ipsi ad baptismum recipiendum, libere id petentes, admitti possint.

§ 1. By the testimony of their words and of their lives, missionaries are to establish a sincere dialogue with those who do not believe in Christ, so that, taking their native character and culture into account, ways may be opened up by which they can be led to know the message of the Gospel.

§ 2. Missionaries are to ensure that they teach the truths of the faith to those whom they judge to be ready to receive the message of the Gospel, so that, if they freely request it, they may be admitted to the reception of Baptism.

SOURCES: § 1: *AG* 11, 12; SNB Instr. *Documentum quod,* 28 Aug. 1968 (*AAS* 60 [1968] 692–704); *EN* 51–53
§ 2: *AG* 13

CROSS REFERENCES: cc. 748, 769

COMMENTARY

Fernando Retamal

1. *Text of the canon*

The persons subject to the norm of this canon are missionaries (c. 784). As the main persons involved with the "plantatio Ecclesiae," they normally assume a dynamic process whose principle stages are outlined by the legislator as follows:

— dialogue (§ 1);

— teaching the truths of the faith (§ 2);

— voluntary request for baptism (§ 2).

The persons who are the focus of this process are "those who do not believe in Christ," which turns out to mean peoples or groups where the Church has not yet taken root (c. 786). Incidentally, this confirms the distinction that has been made between a mission and ecumenical activity.

"Plantatio Ecclesiae" thus takes the form of *dialog* adapted to the mentality and culture of those with whom the dialog takes place (§ 1); this should normally lead to teaching the truths of the faith to those whom they (the missionaries) judge to be ready, so that, if they freely request, they may ask to be baptized and be allowed to receive baptism.

2. *Three themes that are presented in the canon:*

a) The missionary dialogue;

b) The inculturation of the Gospel;

c) The pre-catechumenate.

a) *Missionary dialogue*

The subject of the Church in dialogue, as a fundamental stance, was proposed by Paul VI in his first encyclical, *Ecclesiam suam* (6 August 1964); shortly before, it had led to the creation of the SNB[1] in the Roman Curia; later, the dialogue theme received many contributions from the church's magisterium which is the point of interest here.[2]

The Encyclical *Redemptoris Missio*, concerning the magisterium on the missions written by one who is at the same time the legislator of this norm, is an invaluable guide to this study, especially nos. 55–57. The heading in the Encyclical that introduces this theme is significant: "The dialogue with *brothers* of other religions." This gives it a special meaning, which is based on the unity of humankind in God's plan of creation, in salvation made possible by Jesus Christ and in the final destiny of all humanity.[3]

The dialogue is an initial expression that is part of the church's mission. It is a pre-evangelization phase, which, wherever it is necessary, is to lead to an explicit proclamation of the Good News of salvation in Jesus

1. Cf. PAUL VI, Litt. Ap. *Progrediente Concilio*, May 19, 1964, in *AAS* 56 (1964), p. 560; also *REU* 96–99; *PB* 159–162, such as PCID.

2. Cf. *CD* 13, 2; *AG* 11; 34; 41; *NAE* 2; 4; *AA* 14; 29; 31; *GS* 28; *GE* 11; SNB, "L'espérance qui est en nous. Brève présentation de la foi catholique," in *Bulletin* 3 (1967), supplement; idem, "Vers la rencontre des religions. Suggestions pour le dialogue," in ibid. (June 1967), supplement; idem, Document "L'atteggiamento della Chiesa di fronte ai seguaci di altre religioni," in *AAS* 76 (1984), pp. 816–828; PDCR-CEP, Document "Diálogo y anuncio," May 19, 1991, in *L'Osservatore romano*, Spanish edition from June 28, 1991, pp. 9–15 (369–375) (English edition: August 1, 1991, pp. 5–11).

3. Cf. JOHN PAUL II, Address to the Roman Curia, December 22, 1986, in *L'Osservatore romano*, Spanish edition from January 4, 1987, pp. 6–8 (English edition: January 5, 1987, pp. 6–7).

Christ. It involves two complementary activities, using different methods that are not interchangeable or contradictory. Moreover, it is to be carried on with the conviction that the Church is the normal path to salvation and that only she has the fullness of means to attain salvation (*RM* 44 and 45). Its primacy in no way diminishes the Church's acknowledgment of whatever is true and holy in non-Christian religions as "seeds of the Word" and an expression of the Truth that illuminates every individual (cf. *NAE*, 2; *LG* 17). This profound respect is one of the characteristics of dialogue, which must be "sincere" and at the same time based on Christian hope and charity. Differences or even contradictions must be accepted and the decisions freely made by each person, following the dictates of one's conscience, must be respected (*DH* 2).

The legislator, in directing that this dialogue be undertaken "with the testimony of one's life," includes the need for missionaries to deepen and remain consistent with their own Christian identity, openness to an understanding of the identity of those with whom they are in dialog, and humility and loyalty, in the awareness that a mutual exchange is intended to overcome prejudices and intolerance (*RM* 42 and 56). The Decree *Ad gentes* gives many considerations on the requirements of this testimony in the formation of missionaries (*AG* 23–26) and in the forms it is often required to take (*AG* 11–12, etc.).

A dialog undertaken "with the testimony of the word," on the other hand, requires of missionaries a special sensitivity in order to discover the contents and appropriate language that will enable them to introduce aspects of Catholic doctrine that can be gradually shared by their non-Christian listeners. A good example of this is provided in *Gaudium et spes*, especially part I, and by the attitude taken by the present Roman Pontiff, John Paul II toward Muslims and the great religions of Asia during his apostolic travels.

In addition to the "dialog of life" expressly mentioned in this canon, other forms of dialog may be used, such as exchanges between experts and official representatives of various religious traditions or the sharing of the respective spiritual experiences.

All Christians are called to make a personal commitment to witnessing and dialogue to carry out the Church's one mission. How this is done will depend on circumstances and also on the extent of one's preparation. Those who undertake dialog have the obligation to meet the expectations of their listeners on the contents of the Christian faith and explain it when asked (I Pt 3:15), which puts Christians themselves in an increasingly greater touch with their own Christian vocation.[4]

4. Cf. PDCR-CEP, Document "Diálogo y anuncio," cit., no. 82.

b) *Inculturation of the Gospel*

The start down the path leading to knowledge of the Gospel message, which is the point of this dialogue, should be begun "taking into account the mentality and culture of those who do not believe in Christ." This is how the inculturation of the Gospel is approached, and it is a topic of fundamental importance, especially in the mission "ad gentes."

This inculturation is described as "the intimate transformation of authentic cultural values through their integration in Christianity and the insertion of Christianity in the various cultures" (*RM* 52):a valid expression of missionary activity that should be followed at all times throughout the evangelization effort in different circumstances has been recognized in the Apostle Paul's preaching at Lystra and Athens (Acts 14:11–17; 17:22–31).[5] There are also numerous documents of the ecclesiastical magisterium on this subject.[6]

Preparation for its maturity and fullness in Christ can be glimpsed in the "seeds of the Word" sown by the Spirit in individual persons and humankind's religious traditions (*RM* 56 and 28).

The bases which guide this inculturation of the Christian faith are of the following types:

— christological (the mystery of the incarnation of the Word);

— liturgical (one's dialogue with God, which is expressed in a communal way with specific signs and symbols);

— anthropological (acknowledgment, eventual purification and elevation of values of a particular condition of peoples) (*GS* 57–58);

— socio-political (consideration of the various cultures).[7]

The Church's first proclamation of the Gospel in the context of the lives of individuals and peoples receiving the Gospel is made in concrete language that is adapted to circumstances and respects local cultures. The Church proposes; it does not impose anything, but respects each person's free will in one's search for truth (*RM* 44 and 39). Acknowledging the

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5. Other entries include cf. JOHN PAUL II, Enc. *Slavorum Apostoli*, June 2, 1985, In regard to Sts. Cyril and Methodius, in *AAS* 77 (1985), pp. 779–813, especially nos. 18, 19, 21; idem, "Discurso en el IV centenario de la llegada del p. Matteo Ricci a China," October 25, 1982, in *L'Osservatore Romano*, Spanish edition from December 12, 1982, pp. 6, 8 (790, 792) (English edition: November 22, 1982, pp. 6–7), etc.

6. Cf. *FC*, 10; ITC, *Themata selecta de ecclesiologia, October 7, 1985: 4. Populus Dei et inculturatio*, in *EV* 9, 1699–1709; idem, *Documentum Commisio Theologica* (regarding faith and enculturation), October 3–8, 1988, in ibid. 11, nos. 1347–1424; IV CONFERENCIA GENERAL DEL EPISCOPADO LATINOAMERICANO, Santo Domingo, October, 1992, *Conclusiones*, nos. 228–286.

7. Cf. SÍNODO DE LOS OBISPOS (1987), *Elenco de proposiciones sobre la vocación y la misión de los laicos en la Iglesia (October 29, 1987), Proposiciones 33 y 34*, in *EV* 10, 2171-2173.

limits of missionary methods of other eras, in order to be fair and objective, requires situating these methods in the circumstances of the times when those missionaries were active, and evaluating them in the light and efficacy of the action they took. In this way, lessons can be learned from past experiences that can be quite useful and positive.[8]

Inculturation should be done by all the people of God, who reflect and live on the genuine meaning of the faith (*LG* 12), not just certain experts. In this way, mature inculturation in the bosom of the community should be guided and encouraged by pastors, but not forced, so as not to cause negative reactions from Christians. It is a process that requires a long time, to avoid becoming a mere outward acceptance, and it should be a part of all missionary activity and Church practice. Conceived of as incubating the Christian mystery in the bosom of the community, it necessarily requires gradual change that makes it possible to express the truth of the Christian experience being lived by this community (*RM* 53–54).

Like any human work, culture must be purified of sin, elevated and perfected, which is where the role of pastors is important. Pastors are the ones who must discern and promote the inculturation process.

At regional and national levels, the problem, in addition to the tasks allocated by the Council (*AG* 31), has now been assigned to the bishops' conferences (cf. *RM* 76). It is incumbent upon the bishops' conferences to promote theological studies providing the necessary basis for adaptations to be made in the various areas of missionary activity and search for ways, including new ways, of inculcation in peoples and groups among whom the missionaries are living or to whom they have been sent (*ES* III, 18).

This attitude entails an existential willingness on the part of each missionary to overcome one's own cultural conditioning and gradually insert oneself, intelligently and respectfully, into other environments, which are sometimes very different; knowledge of the regional language, intellectual accommodation to one's listeners' mentality and local customs and practices; and give up all human goals and desire for control. Such interior and exterior adaptation in this sense, following the model of the incarnation of the Word, must maintain the contents of the Gospel message intact. At the same time, it particularly energizes the formation process of future leaders in the "plantatio Ecclesiae" and their missionary activity.[9]

The new churches, as fruit grown with great effort, begin to exhibit their own expanding vitality in the ministries and charisms of new Christians. "Finally, the Faith is taught by an adequate catechesis; it is celebrated in a liturgy in harmony with the character of the people, and by

8. Cf. PDCR-CEP, Document "Diálogo y anuncio," cit., *passim*.
9. Cf. *AG* 18, 22, 41; *EN* 69–70; *PDV*, 55; SCRSI-SCEP, Instr. "From October," June 3, 1978, in *Bibliografia missionaria* 42 (1978), pp. 318–324, especially: 3. *The Africanisation of religious life.*

suitable canonical legislation, it is introduced into upright institutions and local customs" (*AG* 19, 2).

c) *The pre-catechumenate*

As a pre-evangelization phase, an inculturated missionary dialogue prepares some people to receive the Gospel message directly and explicitly.

It is an initial conversion in their case, but deemed to be sufficient by the missionaries, who are the subject of the norm in both paragraphs of this canon. There is then an authentic encounter between the movement of the Spirit, "who opens their hearts" (*AG* 13), and each person's response, which must be entirely free and responsible, and not under pressure of any kind (*DH* 2, 4, 10; c. 748 § 2).

This phase is called the "pre-catechumenate in c. 788 § 1 and is slightly regulated by liturgical law.[10]

This phase consists entirely of an explanation of the Gospel to candidates which is sufficient to bring about their willingness to follow a Christian path toward maturity and to freely request baptism. Their reasons for conversion (which should be exclusively religious) should be determined and if necessary, they should be purified of any other expectations.

The bishops' conferences should determine the procedures for receiving these "sympathizers" for the first time, depending on each case and the local circumstances, and instruct missionaries, catechists and the Christian community on the follow-up to be offered them (RCIA 9–13).

Both the candidate's conversion process and the Church's guidance toward baptism must be free of all coercion for reasons having to do with the very nature of accepting Christ: "It is absolutely necessary that this be done freely and spontaneously, since no one believes without wanting to. Thus, if some persons are in fact obligated to go into a church, approach the altar and receive the sacraments without faith, these persons do not thereby become Christ's true faithful, since faith, without which 'it is impossible to please God' (Heb 11:6), must be the freest 'gift of understanding and will.'"[11]

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10. Cf. *SCDW*, Decr. of promulgation, "Ordo initiationis christianae adultorum," January 6, 1972, in *AAS* 64 (1972), p. 252; RCIA, in *Enchiridion documentorum Instaurationis Liturgicae* I, nos. 2640–2800.

11. PIUS XII, Enc. *Mystici Corporis*, in *AAS* 35 (1943), p. 243 (the quotation comes from: ST. AUGUSTINE, *In Ioann, Ev. Tract*, 26, 2; and VATICAN COUNCIL I, *Const. de fide cath.*, ch. 3).

788 **§ 1. Qui voluntatem amplectendi fidem in Christum manifestaverint, expleto tempore praecatechumenatus, liturgicis caeremoniis admittantur ad catechumenatum, atque eorum nomina scribantur in libro ad hoc destinato.**

§ 2. Catechumeni, per vitae christianae institutionem et tirocinium, apte initientur mysterio salutis atque introducantur in vitam fidei, liturgiae et caritatis populi Dei atque apostolatus.

§ 3. Conferentiae Episcoporum est statuta edere quibus catechumenatus ordinetur, determinando quaenam a catechumenis sint praestanda, atque definiendo quaenam eis agnoscantur praerogativae.

§ 1. Those who have expressed the wish to embrace faith in Christ, and who have completed the period of their preliminary catechumenate, are to be admitted to the catechumenate proper in a liturgical ceremony, and their names are to be inscribed in the book which is kept for this purpose.

§ 2. By formation and their first steps in Christian living, catechumens are to be initiated into the mysteries of salvation, and introduced into the life of faith, liturgy and charity of the people of God, as well as into the apostolate.

§ 3. It is the responsibility of the Bishops' Conference to establish norms regulating the catechumenate, determining what should be done by catechumens and what should be their prerogatives.

SOURCES: § 1: SCRit Decr. *Ordo baptismi*, 16 Apr. 1962 (*AAS* 54 [1962] 310–315); *SC* 64; *AG* 13,14; *GCD* 130; RCIA 7, 17; *DPMB* 72
§ 2: SCRit Decr. *Ordo baptismi*, 16 Apr. 1962 (*AAS* 54 [1962] 310–315); *AG* 14; RCIA 19, 98
§ 3: SCRit Resp., 8 Mar. 1919 (*AAS* 11 [1919] 144); *AG* 14; RCIA 12, 20, 64, 65

CROSS REFERENCES: cc. 206, 851,1°

COMMENTARY

Fernando Retamal

The three paragraphs successively expound: entry to the catechumenate (§ 1); the basic elements of this phase (§ 2); bishops' conferences

are to establish norms regulating the catechumenate, determining what should be expected of the catechumens and what should be their prerogatives (§ 3).

1. *Entry to the catechumenate* (§ 1)

Both this matter and the matter in the following paragraph are largely determined by liturgical law in RCIA, which remains in effect in all areas that are not contrary to the canons of this Code (c. 2). Frequent references will be made, then, to this *Ordo* in studying the elements of greatest juridical relevance that the legislator judged necessary to place in the *CIC*.

According to commonly accepted exegesis, the fact that the sentence "those who have completed the period of their preliminary catechumenate" appears in the ablative absolute is not a reason for considering it to be an essential condition for the validity of entering into Christian initiation.[1] However, it is pointed out that it "is of great importance" and that it "should not ordinarily be omitted" (RCIA, 9). It is, in fact, the initial human and supernatural basis for embracing the Christian faith, even though it may take manifold forms, as can be seen from the generic allusion in c. 787 § 2.

"The wish to embrace faith in Christ" is the same as the "wish to join the Church" (cf. c. 206): both aspects occur simultaneously upon receiving baptism and are therefore interchangeable (c. 204 § 1). This "express" (c. 206: "explicit") wish, then, must be expressed outwardly in a way that is juridically verifiable, constituting a real juridical act on the part of those desiring to join (c. 124).

This step, as the *Ordo initiationis* points out, should not be premature. Candidates, depending on their readiness and temperament, should be allowed such time as is necessary to develop their initial faith and show the first signs of conversion (RCIA, 50). Judging their preparation, pastors, with the help of the person responsible for each catechumen (the "sponsors"), who present them, vouch for their good initial intentions and help them along the road they are beginning to travel (RCIA, 42). At the same time, others, catechists and deacons, lend their assistance in this discernment, depending on outward signs (RCIA, 16).

Acceptance and entry into the catechumenate should be done "in liturgical ceremonies," a general expression that is described in detail in the rite of admission in the *Ordo initiationis* (RCIA, 68–72).

1. Cf. G. MICHIELS, *Normae Generales Iuris Canonici*, II (Rome 1949), p. 350.

Recording the names of persons entering the catechumenate has its roots in the early catechumenate liturgy and is now encouraged by the legislator. A new book intended exclusively for this purpose is thus introduced in church archives and it is regulated by the bishops' conferences (cc. 535 § 1, 788 § 3). The catechumens' names are to be entered in it, as well as the minister, the sponsors, and the date and place of admission (RCIA, 17).

Those who are admitted in this way obtain the status of "catechumens," a title with a special link to the Church, "which already cherishes them as its own" (c. 206 § 1), since "they are already of the household of Christ" (*AG* 14; *LG* 14). It is in fact an ecclesial order restored by the mandate of Vatican II (*SC* 64). Its juridical statutes—a matter of a different source: cf. c. 206 §§ 1–2—legally determine the bond that is established between them and the society-Church (c. 204 § 2).

As defined here, the term "catechumen" is distinct from other situations, which consequently are subject to different juridical, pastoral and liturgical treatment:

— adults baptized as infants that have not been confirmed or taken the Eucharist (cf. RCIA, 295);

— baptized adults who wish to enter into full communion with the Catholic Church (RCIA, *Appendix*, 5).

The link between catechumens and the Church, which is juridically defined in c. 206, gives the Church the right to guide catechumens in their preparation for baptism, impose requirements on them and adequately promote them through the catechumenate phases, thus exercising in them, in its genuine expression, its evangelizing mission (c. 781).

Catechumens, for their part, consequently obtain certain prerogatives: to be prepared properly for the sacraments of initiation and their future Christian life; to become a part of the life of the people of God and participate, in a manner commensurate with their condition, in the life and the spiritual benefits of the Church. Given the required provisions laid down by the ecclesiastical authority, candidates acquire a real exigency to be admitted to baptism according to c. 865 § 1.

It is incumbent upon the bishop or his delegate to admit candidates for "election" and the sacraments. The legislator of the *CIC*, for his part, allows them to receive liturgical blessings (c. 1170), which include public sacramentals; they may therefore be admitted to the imposition of ashes, the presentation of candles and of the blessed palm branches (cf. c. 6 § 2[2]). As far as funerals are concerned, catechumens may be considered the same as the faithful (c. 1183 § 1). A special situation arises with respect to the impediment that invalidates a marriage between a Catholic and a per-

2. Cf. SCR, *Reply*, March 8, 1919, in *AAS* 11 (1919), p. 114.

son that has not been baptized (c. 1086), including catechumens, and with the requirement for the statements and promises required under cc. 1125–1126 if the dispensation is granted.[3] For its part, the *Ordo initiationis* provides a special rite for the marriage of two catechumens or a catechumen and someone who has not been baptized (RCIA, 18).

2. *The catechumenate for adults* (§ 2)

During the last several centuries, the catechumenate was considered to be a special, and almost exclusive, component of "ad gentes" missions. Vatican II, in ordering its restoration (*SC* 64), gives bishops the duty to restore or better adapt instruction of adult catechumens as part of their mission as teachers of the faith (*CD* 14), thereby placing it within the domain of the care of souls of a particular church; this institution is responsive to a situation that is becoming more and more frequent, even in older churches. For this reason, the catechumenate also appears in other places in the *CIC*, especially on the occasion of baptism (book IV, part I, title I).

Diocesan bishops, then, have the faculty to restore the catechumenate in their Church in accordance with the procedures established by their respective bishops' conferences (RCIA, 66). On the other hand, the institute is covered by the law itself in mission territories.

The catechumenate is not considered to be a mere propounding of dogmas and principles, but rather as formation and learning ("institutio et tirocinium") about Christian life. It entails, then, a journey marked by stages and degrees that is a gradual entry into an alliance of God with men and women through the mystery of Redemption, with a consequent change of mentality and customs, which at times does not exclude social consequences, breaks and separations (*AG* 13). The role of catechists, in addition to the persons mentioned above, comes into play, as well as that of the community as a whole (*AG* 14), which, together with the catechumens, becomes more and more aware of the mystery of redemption, renews its own conversion and with its example, inspires the candidates to live the Christian vocation (RCIA, 4).

The catechumenate has three "levels" that mark the culminating moments of initiation, and these levels are sealed with the rites of Entry, Election and Celebration of the Sacraments, respectively, and they are related to four consecutive "times":

— the "pre-catechumenate," characterized by the first evangelization;

— the "catechumenate," which is intended to teach full catechesis;

3. "Ob graves difficultates quae haberentur in determinando quando quis incipit esse catechumenus": *Comm.* 9 (1977), p. 363.

— "purification and illumination" to provide a more intense spiritual preparation for receiving the sacraments of initiation; and

— "mystagogy," marked by the new experience of the sacraments and the community (RCIA, 6–7).

The progression outlined above leads to full Christian initiation, sealed by the sacraments of baptism, confirmation and the Eucharist (c. 842 § 2), which must be given successively on the same occasion, unless there is a serious reason against it (c. 866). A presbyter legitimately commissioned to baptize a catechumen is empowered by the same law to administer confirmation to said catechumen (c. 883 § 2).

An age-adapted catechumen plan is to be followed for children not baptized as infants who have reached the age of reason and catechesis and are presented at the initiative of their parents or guardians or who come spontaneously, with the consent of their parents or guardians. Considering their dependence on their parents' or guardians' authority and also their ability to grow in their personal faith, Christian initiation should be imparted gradually and supported in the same catechetical group as that of their already baptized peers who are being prepared for confirmation and the Eucharist. Their parents should be included; their consent is required for initiation and their help is necessary for the future Christian life they are to lead (cf. c. 774 § 2).

If bishops' conferences have set an older age for certain regions than the age given in c. 891, these children, upon completion of preparation, may receive the sacraments of baptism and the Eucharist and postpone confirmation and its related catechesis till the proper age (c. 777; RCIA, 306–346).

3. *Statutes of bishops' conferences* (§ 3)

The legislator confers upon bishops' conferences the faculty to issue statutes on:

— organizing the catechumenate on the basis of the elements which have been established; and

— service to be required of the catechumens and prerogatives to be required.

With respect to the first point, any adaptations are of special importance that may have been made on the basis of elements that are used among each people and that are consistent with Christian rites (*SC* 65). This is of special importance in mission territories and it is a new dimension of the inculturation of the Gospel (cf. c. 851,1°; RCIA 64–65). The catechesis of unbaptized children that need personal attention for preparation is part of this organization (c. 852 § 1).

The legislator alludes to catechumens' service and prerogatives, which are to be determined under c. 206 § 2. They entail a special relationship with the Church that is defined therein. In revising the statutes that had been recognized to date,[4] the great variety and complementary nature of those originating from mission territories and those from areas with an ancient Christian tradition are noted. Without a doubt, this will be the subject of specialized research. The progressive integration of catechumens into associations of the faithful and other bodies of the Christian community, subject to limitations on the extent of their participation, depending on their ecclesial status, are of particular interest.

Until now no attention has been given to a catechumen that is suitably disposed to, but reluctant to receive baptism and his right of immunity from being coerced to be baptized (cf. *DH* 2).[5] In extreme situations, certainly church authorities have the right to expel from the catechumenate, a catechumen who turns out to be unworthy. Regulations for such cases may be adopted analogously from those applicable to associations of the faithful (c. 308), without precluding appeal. In truth, these are matters that are largely open to later studies.

The statutes thus issued by the bishops' conferences under this canon (§ 3) shall be considered issued by virtue of their legislative power and shall be governed by the norms of canons concerning these laws (cc. 455; 94 § 3).

4. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al CIC* (Milan 1990), *passim*.

5. Cf. F.J. URRUTIA, "Catechumenatus iuxta Concilium Oecumenicum Vaticanum secundum," in *Periodica* 63 (1974), p. 141.

789 Neophyti, apta institutione ad veritatem evangelicam penitius cognoscendam et officia per baptismum suscepta implenda efformentur; sincero amore erga Christum eiusque Ecclesiam imbuantur.

By means of appropriate formation, neophytes are to be led to a deeper knowledge of the Gospel truths, and to the fulfilment of the duties undertaken in baptism. They are also to be imbued with a sincere love of Christ and his Church.

SOURCES: *AG* 15; RCIA 7, 37–40

CROSS REFERENCES: cc. 111 § 2, 787 § 2, 788 § 2, 865 § 1, 1042,3°

COMMENTARY

Fernando Retamal

1. *The text*

Persons receiving baptism after going through the catechumenate for adults are called "neophytes" by the legislator, using terminology consecrated by Church tradition. This term therefore is not used for newly baptized infants.

According to c. 865 § 1, neophytes, prior to baptism, must have expressed the wish to receive the sacrament and shown the fruits of the catechumen's "institutio" and "tirocinium" (c. 788 § 2); upon receiving baptism, they may elect and join the autonomous ritual church of their choice (c. 111 § 2).

The persons who are the subjects of the norm given by the legislator in this canon are the same persons whose duty is the process of the catechumenate, of which the *mystagogia* phase is the culmination.

By means of *proper formation* ("apta institutione"), they are to follow the two guiding paths of the pre-baptism catechumenate: *knowledge* of the truth of the Gospel and *fulfillment* of their baptismal duties. With respect to this knowledge, there is an ascending line from the precatechumenate ("veritates fidei edoceant": c. 787 § 2), through the catechumenate ("apte initientur mysterio salutis": c. 788 § 2) to mystagogy ("veritatem evangelicam penitius cognoscendam": c. 789). With respect to baptismal "duties," the term is used that implies carrying them out by the person who is the subject of the canonical system in all its breadth, one

who is now a "person in the Church" (c. 96) and one of "the Christian faithful" (c. 204 § 1).

The legislator, in a phrase that is almost admonitory and evokes the mystagogic catecheses of the Church Fathers, indirectly singles out neophytes as persons who must be imbued with a sincere love for Christ and his Church.

2. *The mystagogic period*

The last phase of Christian initiation, *mystagogy*, is the time of Christian experience and first spiritual fruit, and to the extent possible, it is to coincide with Easter. Closer links are also established with the community of the faithful.

New Christians are the genuine result of evangelizing work, and in mission territories they are the precious fruit of "plantatio Ecclesiae." They are to cultivate an ecumenical spirit, respecting baptized non-Catholics as brothers and sisters in the faith. When possible, this is to result in ecumenical actions by the entire community (*AG* 15). In the *CIC*, neophytes have a domicile of origin with their parents from the moment of their birth (c. 101 § 1), but they acquire their own canonical domicile and quasi-domicile, with the effects foreseen in the law (cc. 102–107). Neophytes, in accordance with Paul's admonition (I Tm 3:6), which is continued in the canonical tradition, have a simple impediment from receiving sacred orders (c. 1042 § 3), from which a competent ordinary may dispense (c. 1047 § 4).

A different situation applies to the Eastern Catholic Churches, and for this reason c. 591 of the *CCEO* prescribes prudent promotion of vocations to the sacred ministries in the case of neophytes "so that the young Churches flourish before long in native clerics."

The newly baptized are a priority concern for all pastors of souls, for they are to be gradually educated to know and live the Christian vocation (cf. *PO* 6).

790 **§ 1. Episcopi dioecesani in territoriis missionis est:**
1° promovere, moderari et coordinare incepta et opera, quae ad actionem missionalem spectant;
2° curare ut debitae ineantur conventiones cum Moderatoribus institutorum quae operi missionali se dedicant, utque relationes cum iisdem in bonum cedant missionis.

§ 2. Praescriptis ab Episcopo dioecesano de quibus in § 1, n. 1 editis, subsunt omnes missionarii, etiam religiosi eorumque auxiliares in eius dicione degentes.

§ 1. In mission territories it is the responsibility of the diocesan Bishop:
1° to promote, regulate and coordinate both new initiatives and established works concerning missionary activity;
2° to ensure that there are proper agreements with the Moderators of those institutes which dedicate themselves to missionary activities, and that relationships with them are for the good of the mission.

§ 2. The provisions made by the diocesan Bishop in accordance with § 1 n. 1 are binding on all missionaries, including religious and their helpers residing in his territory.

SOURCES: § 1,1°: *AG* 30; SCEP Instr. *Relationes in territoriis*, 24 Feb. 1969, 13b (*AAS* 61 [1969] 285)
§ 1,2°: SCPF Instr. *Quum huic*, 8 Dec. 1929 (*AAS* 22 [1930] 111–115); *AG* 32; SCEP Instr. *Relationes in territoriis*, 24 Feb. 1969, 14c (*AAS* 61 [1969] 286); SCEP *Schema contractuum 1969*
§ 2: c. 296 § 1; *AG* 30; SCEP Instr. *Relationes in territoriis*, 24 Feb. 1969, 14d (*AAS* 61 [1969] 285)

CROSS REFERENCES: cc. 782 § 2; 786

COMMENTARY

Fernando Retamal

The legislator, in studying the possibilities of concretely implementing missionary work, looks at the matter from the top: from the point of view of the person who presides over the ecclesiastical division, conferring upon it a unitary and organic nature that in no way diminishes the sphere of functions incumbent upon other agents of evangelization.

1. The first sentence of the canon brings us face to face with both the multiplicity of factors involved in the process of "plantatio Ecclesiae" until it is elevated to a "new Church" or diocese in the proper sense and the complexity of conditions that concretely determines when it ceases to be a "mission territory" (see commentary on c. 786).

The code Commission, in examining the latter point, noted that a more exact determination is to be forthcoming from doctrine or the competent authority.[1]

This broad range of situations seems to be synthesized in the two terms—which at first glance seem to be incongruous—with which the canon begins: "diocesan Bishop" and "mission territories." In fact, it would seem that the ordinary, immediate, and proper power by which the "Bishop" governs the diocese entrusted to him (c. 381 § 1) is incompatible with "mission territories"—apostolic prefectures or vicariates—which are governed in the name of the Supreme Pontiff (c. 371 § 1).

However, in the context of this title, both terms encompass the factors and conditions mentioned above. For this reason, the process of "ad gentes" evangelization, contained in synthesis, can be seen:

— on the one hand, apostolic prefects and vicars are equivalent to diocesan bishops in the law, unless provided otherwise (c. 381 § 2) because of the nature of the matter (e.g., lack of an episcopal order: c. 1015 § 3) or prescription of law (e.g., an "ad limina" visit by apostolic prefects, c. 400 § 3; provision of vacancy, c. 420; presbyteral council and college of consultors, cc. 495 § 2, 502 § 4);

— on the other hand, the apostolic prefectures and vicariates, even if considered "mission territories," are the equivalent of dioceses for all canonical purposes, "unless determined otherwise" (c. 368). When they are canonically elevated to a "new church" or diocese, they are entrusted with continuing the work of evangelization themselves (*AG* 15 and 20). However, shortages which they may suffer (*AG* 19) often result in the fact that these diocesan churches remain dependent on the CEP and are still considered a "mission territory" for a long time (*RM* 37).

Thus the sphere of activities mentioned here and attributed to diocesan bishops may also inure exclusively to apostolic prefects and vicars, unless they give the vicar general or episcopal vicar a special mandate (c. 134 § 3). The legislator's moderation, unlike the *CIC*/1917, means that the missionary system is to assimilate gradually into universal legislation while still subject to provisions issued by the CEP.

In their initial phase, mission divisions are sometimes "missiones sui iuris" which are not mentioned in the *CIC*. Their status depends on the

1. *Comm.* 15 (1983), pp. 99–100.

decree under which they are canonically founded by the Roman Congregation for the Missions.

2. "It is the Bishop's role, as the ruler and center of unity in the diocesan apostolate, to promote missionary activity, to direct it and to coordinate it but always in such a way that the zeal and spontaneity of those who share in the work may be preserved and fostered" (*AG* 30).

The first paragraph of the canon—whose source is the above mentioned Conciliar text—is a concrete embodiment of c. 782 § 2, concerning the missionary duty of each bishop in his particular church, and the wording is remarkably similar. There is an underlying concept here that occurs from time to time throughout the *CIC* that concerns the ministry of diocesan pastors, and it attains a connotation in this context that is also that of a missionary nature.

3. *Agreements with the institutes*. The decisive role played by the institutes in missionary work moves the legislator to give priority to agreements ensuring them of their due role in mission territories. These agreements must be in accordance with the canonical status of these territories, depending on whether or not they have been elevated to a diocese.

The Church initially entrusts a territory to an institute by founding an ecclesiastical division, as mentioned earlier. The "commission" or "ius commissionis" system then comes into being. This system, under the dicastery responsible for the missions, regulates the various competencies and operations and the institute's members related to the "plantatio Ecclesiae." This situation is governed by the Instruction *Quum huic* (see commentary on c. 786), with timely modifications of current canonical legislation.

When a diocese is erected, the foregoing juridical system ceases, and a new one known as a "*mandate*" takes its place. It takes the form of a special collaboration between these institutes and the diocesan bishop. This ensures the continuity of missionary work on one hand, and the proper inclusion of the apostolate in the body of the new church on the other hand. The CEP alone grants and eventually rescinds these mandates at the request of the bishop involved, after considering the institute's opinion and after personally consulting the region's bishops' conference. By means of an agreement between the bishop and the institute, he is made responsible for taking on a certain territory or some work of particular importance. The agreement covers matters that are not regulated by common law. Among other things, it may be advisable to stipulate the number of missionaries which the institute promises to maintain in on the work being taken on and to define the participation of the institute's clergy or laypersons on diocesan, presbyteral or pastoral councils, as the case may be.

A bishop may allow various missionary institutes, with or without a mandate, in the various regions and works of the diocese, with no obligation to consult first with any institute that has already received a mandate

in the same area, unless doing so was prohibited under this agreement. In the case of an institute without a mandate, agreements and responsibilities exclusive to the diocesan bishop and superior in question without the intervention or endorsement of the Roman dicastery.

Mission agreements were highly recommended by Vatican II (*AG* 32), and the general principles of the mandate system were set forth in a new document, the Instruction *Relationes in territoriis* (February 24, 1969: see commentary on c. 786), which contains guidelines on agreements that may be stipulated under the law.

4. Subordination of all missionaries (c. 784) and their helpers—unquestionably primarily including catechists in this case—to the bishop's provisions on missionary work is consistent with what the law says about the religious with respect to the diocese's apostolate (c. 678 § 1). The difference with this canon is that it covers the entire range of missionaries and considers them as such, both individually and collectively. This situation, in the local environment, while ensuring the necessary coordination with the bishop, leaves intact—under common law—the internal life of the institutes and the respective superiors' rights in this life.

Nothing is said here about whether the superiors also have control over the diocesan and missionary apostolate of the members of their institute (cf. cc. 678 §§ 2–3; 681 § 1). As far as "lay missionaries" that do not belong to any missionary institute (or when societies are concerned) a new bond of dependency arises out of their status as such, which urges them on with greater intensity than it does the rest of the faithful.

791 **In singulis dioecesibus ad cooperationem missionalem fovendam:**

1° promoveantur vocationes missionales;
2° sacerdos deputetur ad incepta pro missionibus efficaciter promovenda, praesertim "Pontificia Opera Missionalia";
3° celebretur dies annualis pro missionibus;
4° solvatur quotannis congrua pro missionibus stips, Sanctae Sedi transmittenda.

In order to foster missionary cooperation, in each diocese:

1° missionary vocations are to be promoted;
2° a priest is to be appointed to promote missionary initiatives, especially the 'Pontifical Missionary Works';
3° a day for the missions is to be celebrated annually;
4° each year an appropriate financial contribution for the missions is to be sent to the Holy See.

SOURCES: 1°: *ES* III, 5, 6; *DPMB* 46
2°: *ES* III, 4; SCEP *Statuta Pontificalium Operum Missionalium*, 26 iun. 1980, 6; SCEP Instr. *Quo aptius*, 24 feb. 1969, A 2, 3 (*AAS* 61 [1969] 277); *DPMB* 46
3°: SCPF Instr. *Plurimis abhinc*, 29 iun. 1952, 6 (*AAS* 44 [1952] 549–551); *ES* III, 3
4°: SCRit Rescr. *Il consiglio*, 14 apr. 1926 (*AAS* 19 [1927] 23–24); SCPF Instr. *Plurimis abhinc*, 29 iun. 1952, 4, 6 (*AAS* 44 [1952] 549–551); *ES* III, 8; *PA* 19; SCEP Instr. *Quo aptius*, 24 feb. 1969, A 2, 3 (*AAS* 61 [1969] 277)

CROSS REFERENCES: cc. 781, 782 § 2, 784

COMMENTARY

Fernando Retamal

Participation by all the people of God in missionary work (c. 781) is the goal of the initiatives whose fostering the legislator entrusts in this canon. This norm is directed at every diocese (c. 368), whether or not they are mission territories, and its phrasing in the passive voice implies that it is applicable to the entire broad range of leaders, at the levels and in the areas suitable to each one.

1. *Missionary vocations*

Missionary vocations, like sacred ministry vocations (c. 233), are also a task of the entire Christian community and they encompass the different forms of the missionary charism: clergy, consecrated life and the laity, both men and women (c. 784).

This fostering, even though it is ordinarily directed at juvenile and adolescent candidates, may also include adults, priests, married and celibate professionals, etc., who elect to dedicate themselves to "ad gentes" mission service for a certain period of time or for life.

As fruit of the sanctifying office of the bishop with his presbyterate in a particular church, the Christian people deepens and renews its baptismal vocation, the horizons of charity, and their awareness of the universal Church grows, and they gradually begin participating in the missionary effort with their prayers, sacrifices and all kinds of cooperation. This is the fertile field that is the source of priestly, religious and missionary vocations (*CD* 15; *AG* 36).

Candidates for the priesthood should bear in mind that they are to prepare themselves at the seminary for a sacred ministry of universal scope (c. 257 §§ 1–2). Both candidates and youth of both sexes in Catholic associations are recommended to establish and maintain contacts, respectively, with seminarians and youth in similar associations in mission countries so that they can stimulate each other's ecclesial and missionary awareness (*ES* III, 5).

It has often been noted that the crisis in vocations is due, not so much to a lack of generosity on the part of the youth who are always ready to provide help and sacrifice in times of catastrophes as to a lack of clarity and motivation of the missionary path as a valid option for them to dedicate their whole life. For this reason, fostering vocations should be supported by proper formation for their future work at institutions exclusively designed for this purpose. Candidates should know that in surrendering themselves to these organizations, they will be guided and prepared for truly useful work that will enable them to attain the missionary ideal that inspires them.[1]

2. *Diocesan promotion of the missions*

In the current age, proclaiming and spreading the Gospel requires team planning with input from all Catholic forces. As has been seen, the work of universal coordination is entrusted to the Roman dicastery for

1. Cf. SCEP, Circ. Letter *Nello Studio*, May 17, 1970, regarding the vocation and special formation of future missionaries, nos. 14–15, in *Bibliographia Missionalia* 34 (1970), pp. 190–196.

missions, which is at the service of the Roman Pontiff's and College of Bishops' care for all the churches (c. 782 § 1), and has responsibility for missionary work properly speaking and missionary cooperation (cf. *AG* 29).

As an expression of the diocesan presbyterate's missionary duty in the service of the entire Church, a priest should be appointed to foster effective initiatives to support "ad gentes" missions (*ES* III, 4; this source also notes that said priest should be a member of the diocesan pastoral council).

Among these initiatives, the Pontifical Missionary Works are first priority. They "are the means of imbuing Catholics from their very infancy with a real universal and missionary outlook" (*AG* 38). At the same time, these works are to collect funds to support missions, depending on the various needs. Without losing their close bond with the Apostolic See, these works have taken on a new and more authentic expression of collegiality among the bishops (cf. *RM* 84): the bishops should reserve for them the preeminence that arises from their universal nature.

The Pontifical Missionary Works are a unique institution that encompasses four areas:

a) The Pontifical Missionary Work of the Propagation of the Faith, which was founded to support interest in universal evangelization in all sectors of the people of God. Missionary education, information and consciousness-raising are its principal task.

b) The Pontifical Missionary Work of St. Peter the Apostle, which makes Christian people aware of the problem of local clergy formation in mission churches and invites the faithful to collaborate spiritually and materially in the preparation of candidates for the priesthood; more recently, it has also grown to include the formation of candidates of both sexes for religious life in the missions.

c) The Pontifical Missionary Work of Holy Children or missionary children, which helps educators gradually awaken in children a universal missionary awareness and guide them to spiritual and material communion with children in the poorest regions and churches. From its beginning, it has contributed to the flowering of missionary vocations.

d) The Pontifical Missionary Union of priests and men and women religious, which informs and raises missionary consciousness among those who are consecrated to the Church's pastoral ministry; it also extends to the societies of apostolic life, secular institutes and candidates for this ministry in all its forms— "The Missionary Union of all consecrated souls is itself the soul of the other three Works" (Paul VI, to the World Missions Day, 1972).

Its diocesan organization, even though not mentioned by the legislator in the *CIC*, is to be constituted subject to national executive bodies and the Holy See and it is to be integrated into the overall missionary

pastoral work of each diocese. The priest so designated under this canon may assume combined responsibility for all four Works and serve as the bishop's delegate for missions at the same time. Participation of the laity should be encouraged in the management and activities of Pontifical Missionary Works at various levels, commensurate with the responsibility that all of Christian people have for the missionary task.

The CEP, to which these Works are subject, has promulgated statutes that currently regulate said Pontifical Works.[2]

3. *Annual Missions Day*

By rescript of the SCR,[3] the next-to-last Sunday of October is Missions Day or the "Day of the Universal Mission." It is to be celebrated as a Catholic feast and a day of universal solidarity.

Even though the Pontifical Work of the Propagation of the Faith is active throughout the year, the month of October is to be considered Universal Mission Month in all countries.[4] Missionary news and information is to be facilitated with the help of modern means of social communication so that Christians, feeling that missionary activity is their own, may open their hearts to people's enormous needs and help them (*AG* 36). As a way to help the missionary spirit grow in the Christian people, daily prayers and sacrifices are to be encouraged so that the Annual Missions Day will be a spontaneous demonstration of this spirit (*ES* III, 3).

On the occasion of Missions Day, the Roman Pontiff illustrates annually some aspect of missionary effort with the authority of his magisterium and urges the entire Church to take up its missionary role with renewed generosity.

4. *Financial assistance for the missions*

On the basis of Paul's example of collecting offerings for the poor in the Jerusalem community (Rom 15:25–32; 1 Cor 16:1–5, etc.), the Council has issued a call to take into account other churches' needs and catastrophes suffered by other dioceses or regions when allocating church funds (*CD* 6). This was the reason why a fixed contribution proportionate to income was legislated immediately following the Council (*ES* III, 8) and in this canon. This contribution is to be made each year by the diocese itself,

2. Cf. SCEP, *Statuts des Oeuvres Pontificales Missionnaires*, June 26, 1980, in *EV, Supplementum* 1, 746–797.
3. Cf. Rescr. Ap., April 14, 1926, in *AAS* 19 (1927), pp. 23–24.
4. Cf. SCEP, *Statuts*..., cit., no. 11.

parishes and other diocesan communities, and it is to be distributed by the Holy See to support missions work. This is one of the forms of universal witnessing of charity, a concrete commitment, to help brothers and sisters of the same body of Christ who are oppressed by distressing spiritual and material needs.

5. Finally, it must be noted that the intra-Church communion that is established through missionary work enriches everyone in a mutual exchange. This prevents the isolation of both the ancient churches and the new ones in their own ways and sense of self-sufficiency. The new churches, who are receiving missionaries from abroad, are themselves to send other missionaries from their midst, even missionaries to ancient churches, which are beginning to suffer from shortages of priests and men and women religious. The experience and maturity of one group is energized by the great vitality of the other group. This also illustrates the vocation of all the people of God, instituted by Christ, "established by Christ as a communion of life, love and truth, it is taken up by him also as the instrument for the salvation of all" (*LG* 9).

792 **Episcoporum conferentiae opera instituant ac promoveant, quibus ii qui e terris missionum laboris aut studii causa ad earundem territorium accedant, fraterne recipiantur et congruenti pastorali cura adiuventur.**

The Episcopal Conference is to establish and promote means by which those who come to their territory from the missions, for the purpose of work or study, are to be given a fraternal welcome and helped with suitable pastoral care.

SOURCES: PIUS pp. XII, Enc. *Fidei donum,* 21 apr. 1957 (*AAS* 49 [1957] 245); IOANNES pp. XXIII, Enc. *Princeps Pastorum,* 28 nov. 1959 (*AAS* 51 [1959] 861–862); *AG* 38; *ES* III, 23

CROSS REFERENCES: cc. 586, 516 § 2

COMMENTARY

Fernando Retamal

The norm addressed here by the legislator to the bishops' conferences is to be added to the pastoral care which the Church has long offered to emigrants, who are groups finding themselves in a concrete situation that marginalizes them from ordinary pastoral care. The *CIC* made particular provisions for them in cc. 383 § 1 and 568.

This canon discusses assisting emigrants from mission lands who go to regions that have been Christian since ancient times for work or study purposes. In some way, it discusses continuing the journey they may have begun in their home countries toward Christian faith or ensuring their faithfulness to the baptism they have already received, in an environment that differs in many ways from their home environment (*RM* 82).

However, this perspective is now being broadened, given the phenomenon of migration in a world seeking unity where there is ever-increasing interdependence among peoples and it is more and more difficult to draw boundaries between different cultures (*RM* 82).

Based on *Ad gentes* 38, the text of this canon refers to all kinds of emigrants from mission lands, whether or not they believe in Jesus Christ. It should be added that the causes of this phenomenon are continuing to increase. Refugees and the exiled, who are forced to emigrate for political, racial or economic reasons, must now be included among emigrants.

The extent of this phenomenon requires a) the direction by bishops' conferences of churches of temporary asylum or stable settlement, with the assistance of specialized personnel, including different religious institutes for this specific purpose, and b) the participation of the missionary churches of the emigrants' country of origin. These churches can provide information and reports about the emigrants in particular, as well as pastoral recommendations for taking better care of them, which is not to preclude sending them a priest to serve as a chaplain to his fellow countrymen.

Social and charitable organizations and assistance commissions established by bishops' conferences should proceed in collaboration with other church and civil institutions, especially international organizations. They should contribute toward shaping favorable public opinion on accepting emigrants from these regions. These initiatives also open up a broad area for ecumenical action to provide a global response to the migration phenomenon in the form provided here by the legislator.

The pastoral care of Christian emigrants from missions is not autonomous from or an alternative to diocesan and parochial care by the fully constituted churches receiving emigrants: it is a matter of adequate, specialized care adapted to the condition of these groups of the faithful. If emigrants on one hand are to be gradually and voluntarily assimilated into the communities that have taken them in, efforts should be made on the other hand to retain their cultural and spiritual heritage as a component of pluralism that enriches the local Church.

As far as the institutional and organizational forms that this work may take are concerned, there is a wide range of possibilities, both by founding personal parishes and quasi-parishes (c. 518) and in other ways provided in the *CIC* or innovative ways, depending on circumstances (cf. c. 516 § 2). These include chaplaincies (c. 568), missions for the care of souls and pastoral houses or centers.[1]

Assistance to non-Christian emigrants should follow missionary channels, through sincere dialog combined with Christians' testimony of their words and their lives (c. 787 § 1), with the awareness that, with attentiveness to their social, economic and cultural needs, "an excellent opportunity is offered to communities which have long been Christian to converse with nations which have not yet heard the Gospel, and to show them in their own dutiful love and aid, the genuine face of Christ" (*AG* 38).

1. Cf. *DPMB*, 183 a and b.

TITULUS III
De educatione catholica

TITLE III
Catholic Education

INTRODUCTION

Davide Cito

The CIC/1917 dedicated title XXII of part IV on the Church's Magisterium concerning schools. This subject was discussed in twelve canons (1372–1383) immediately following the norms for seminaries (tit. XXI).

The current code not only treats the subject more extensively (29 canons), but also re-organizes it completely, beginning with a fundamental juridical core: the right to an education, on which depend not only the juridical positions of the various subjects involved in the educational process (family, civil society and Church), but also the principal "educational structures" currently existing, i.e., the various kinds of educational institutions.

There has unquestionably been a profound change of perspective due to the Council's deliberations.[1] This change of perspective justifies the decision to name title III of book III "De educatione catholica" (it was named "De educatione christiana" in the first draft[2]) instead of "De scholis" which is only *one instrument* of education and was the title for norms regulating this subject in the preceding code.

Title III begins with three introductory canons taken primarily from the conciliar declaration *Gravissimum educationis*. These canons present the fundamental juridical coordinates. There follow three chapters devoted to schools, Catholic universities and ecclesiastical universities and faculties, concentrating on the principal, but not the only, means for furthering the educational process. The subdivision into three

1. Cf. G.BALDANZA, "Appunti sulla storia della Dichiarazione *Gravissimum educationis*: il concetto di educazione e di scuola cattolica: la sua evoluzione secondo i vari schemi," in *Seminarium* 37 (1985), pp. 13–15.

2. Cf. R. CASTILLO LARA, "Le Livre III du CIC de 1983. Histoire et principes," in *L'Année canonique* 31 (1988), p. 23.

chapters seems to follow two concomitant, but not homogeneous, criteria. The first criterion, which is totally appropriate, distinguishes elementary and high schools from other institutes of higher learning and universities, since the role, and thus the set of rights and obligations of the educators, given the different ages of the students, especially the family, changes greatly. The second criterion, however, makes a distinction between "Catholic universities" and "ecclesiastical universities," which has the value of better describing ecclesiastical universities, both from the point of view of the purpose of the studies and from the point of view of their juridical governance. On the other hand, it is perhaps not very clear with respect to the substance of ecclesiastical universities itself and runs the risk of losing the link with the university world, in whose spirit they should participate if they do not wish to alter their essence.

793 **§ 1. Parentes, necnon qui eorum locum tenent, obligatione adstringuntur et iure gaudent prolem educandi; parentes catholici officium quoque habent ea eligendi media et instituta quibus, iuxta locorum adiuncta, catholicae filiorum educationi aptius prospicere queant.**

§ 2. Parentibus ius et etiam iis fruendi auxiliis a societate civili praestandis, quibus in catholica educatione filiorum procuranda indigeant.

§ 1. Parents, and those who take their place, have both the obligation and the right to educate their children. Catholic parents have also the duty and the right to choose those means and institutes which, in their local circumstances, can best promote the Catholic education of their children.

§ 2. Parents have moreover the right to avail themselves of that assistance from civil society which they need to provide a Catholic education for their children.

SOURCES: § 1: c. 1372 § 2; PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 59–60 (*AAS* 22 [1930] 49–86); PIUS pp. XI, Enc. *Mit brennender Sorge*, 14 mar. 1937, 164–165 (*AAS* 29 [1937] 145–167); PIUS pp. XII, Alloc., 8 sept. 1946; *GE* 3, 6; PCJP Decl., 10 dec. 1974, 38, 5°
§ 2: *GE* 6, 7; SCCE Instr. *La Scuola Cattolica*, 19 mar. 1977, 81, 82

CROSS REFERENCES: cc. 226 § 2, 774 § 2, 1055, 1136

COMMENTARY

Davide Cito

1. The canon begins by affirming the primary juridical standing of parents with respect to their children's education (§ 1).

This natural right-duty has its roots in procreation (cf. *GE* 3; c. 226 § 2), which gives rise to a relationship that entails the assumption by parents of a commitment to educate their children: "by begetting in love and for love a new person who has within himself or herself the vocation to growth and development, parents by that very fact take on the task of helping that person effectively to live a fully human life" (*FC* 36).

The magisterium describes this parental role as: *essential* by virtue of its connection with the transmission of life; *original* and *primary* in the sense that it does not derive from other persons nor is it in a subordinate position to other entities; *irreplaceable* and *inalienable*, since it cannot be legitimately usurped or delegated in full to others (cf. *FC* 36).

The purpose of mentioning these characteristics is to affirm the role of parents under natural law with respect to illegitimate interference by others. It does not mean, however, that this right-duty is exclusive or exclusionary, since its purpose is to fulfill a function, namely, the comprehensive education of children, which is an inviolable right held by every person (*GE* 1). Consequently, not only does it have intrinsic limits with respect to its contents, but at the same time it confers juridical grounds to civil society that entitle it to play a role in the educational process (*GE* 3).

In addition to parents, persons holding this right-duty include those who take their place, i.e., persons to whom children have been legitimately entrusted in the absence of their parents and in cases of the impossibility or incapacity of parents to provide for their children's education. Godparents do not seem to be covered by the concept of "those who take their place," unless subsequent events result in the conferral of guardianship or adoption, since godparents' function with respect to the Christian formation of baptized or confirmed children places them in a cooperative, subsidiary position with respect to parents or those taking their place (cf. cc. 774 § 2, 872, 892).

The contents of this right-duty extends to all the elements involved in the educational process that are mentioned in c. 795, and they are manifested in the capacity to choose one's children's education according to the dictates of one's conscience, with no external constraints. However, by virtue of its being a right-duty, it has two internal limits arising on one hand from a child's right to receive a genuine education and on the other hand from the growing role of educators in this process. This role enables them to make choices little by little, including choices that conflict with the parents' choice (cf. cc. 98 § 2, 1478 § 3).[1]

The natural juridical standing of parents with respect to the education of their children is given an additional component in the case of Catholic parents (whether one or both parents are Catholic: cf. c. 1125, 1°). At first glance, the fact that Catholic parents are expressly mentioned might seem surprising, since the code is intended for the faithful, but it nevertheless has importance. It furthers the better understanding of two issues: one is related to intra-Church relationships and the other to the behavior of the faithful in civil society.

1. M.E. CASELLATI, *L'educazione dei figli nell'ordinamento canonico* (Padua 1991), p. 122.

First, the continuity that exists between the natural and supernatural orders is adduced[2]: the right-duty of Catholic parents does not consist of adding to "human" education (which would be the same as any other parent would provide) a specifically Christian education; on the contrary, the "human" education must also be oriented in a Christian way, to the point where there is in reality no "human education" plus "Christian education," but rather a single educational process that should be fully Christian, in both its human aspects and its specifically religious aspects.[3] Similarly, the same thing may be said of children's right to an education, since an education "in its fullness cannot be any education other than a Catholic one."[4]

The second aspect has to do with an issue related to the area of religious freedom. In fact, being able to give one's children a Catholic education is an exercise of one's right as a citizen to educate one's children in accordance with one's own religious beliefs. This right merits protection and furtherance by public authorities, since it has to do with an essential component of a person's overall formation, not some marginal or extraneous component.

2. Although the educational duty is primarily incumbent upon parents, it also involves all the components of society. Paragraph 2 emphasizes this social dimension of education, which had been noted by the Council (cf. *GE* 3), by proclaiming that endeavoring to get a Catholic education for one's children is a genuine civil right, the same as the right held by members of the other religious communities.[5] This implies that benefiting from public subsidies is not a privilege for families and that a certain plexus of rights and duties in this area is incumbent upon civil society, "whose role is to direct what is required for the common temporal good" (*GE* 3).

Certainly, the paragraph does not specify concrete ways in which civil society should provide assistance to families to enable them to fulfill their educational duty. This issue depends largely on each country's juridical system. In spite of this unavoidable vagueness, a principle of natural law is set forth here, and its violation would seriously harm a not unimportant aspect of the right to religious freedom.

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2. C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 240.
3. P.A. BONNET, "La ministerialità dei laici genitori," in Quaderni di diritto ecclesiale 2 (1989), p. 348.
4. C.J. ERRÁZURIZ, *Il "munus docendi"...*, cit., p. 240. Cf. *GE* 1–2; c. 217.
5. Cf. UN General Assembly, *Declaración Universal de los derechos del hombre*, December 10, 1948, art. 26; UNESCO General Conference, *Convención relativa a la lucha contra la discriminación en la esfera de la enseñanza*, December 14, 1960, art. 5; UN General Assembly, *Pacto Internacional de derechos civiles y políticos*, December 16, 1966, art. 18 § 4; UN General Assembly, *Pacto Internacional de derechos económicos, sociales y culturales*, December 16, 1966, art. 13; European Parliament. *Resolución sobre la libertad de enseñanza en la Comunidad europea*, March 14, 1984; European Parliament, *Resolución* no. *A2–3/89*, April 12, 1989, art. 16; UN, *Acuerdo sobre los derechos del niño*, November 20, 1989.

794 **§ 1. Singulari ratione officium et ius educandi spectat ad Ecclesiam, cui divinitus missio concredita est homines adiuvandi, ut ad christianae vitae plenitudinem pervenire valeant.**

§ 2. Animarum pastoribus officium est omnia disponendi, ut educatione catholica omnes fideles fruantur.

§ 1. The Church has in a special way the duty and the right of educating, for it has a divine mission of helping all to arrive at the fullness of Christian life.

§ 2. Pastors of souls have the duty of making all possible arrangements so that all the faithful may avail themselves of a Catholic education.

SOURCES: § 1: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 59s (*AAS* 22 [1930] 49–86); PIUS pp. XI, Enc. *Mit brennender Sorge*, 14 mar. 1937, 164s (*AAS* 29 [1937] 145–167); PIUS pp. XII, Alloc., 8 sept. 1946; *GE* Intro., 3
§ 2: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 53–59 (*AAS* 22 [1930] 49–86); *GE* 3, 4

CROSS REFERENCES: cc. 213, 800 § 1, 807, 815

COMMENTARY

Davide Cito

1. "Finally, in a special way, the duty of educating belongs to the Church, not merely because she must be recognized as a human society capable of educating, but especially because she has the responsibility of announcing the way of salvation to all men, of communicating the life of Christ to those who believe, and, in her unfailing solicitude, of assisting men to be able to come to the fullness of this life." (*GE* 3)

This canon is inspired by this passage of the Conciliar Declaration on Education. Although the canon only mentions one, the Church has two claims for presenting itself as an educator,[1] which give rise to two-fold juridical positions with respect to other entities involved in the educational process.

1. A. MONTAN, "La funzione di insegnare della Chiesa," in *La normativa del nuovo Codice*, 2nd ed. (Brescia 1985), pp. 165–166; F. RETAMAL, "La misión educadora de la Iglesia," in *Seminarium* 35 (1983), pp. 552–571.

As regards the claim that the Church is a "human society capable of educating," it can be pointed out that it, like other entities, has a right that conflicts with the government's claim to an educational monopoly in non-religious areas.[2] From this, it is deduced that not only the family, but also social groups living in the civil community, have the right to undertake educational activities by founding, operating and administering entities for this purpose.

As far as the Church is concerned, this right is stated above all in cc. 800 § 1 and 807 with respect to schools, but it extends to other non-school institutions.

However, the second claim is of an exclusive, supernatural nature that is independent of any human power (cf. c. 747). This claim is related to the mission of proclaiming the Gospel to all peoples, which has been entrusted to it by Christ (*DH* 13).

This implies the right-duty to carry out this mission freely, which is not directed only to the faithful to whom the Church is to provide "an education by which their whole life can be imbued with the spirit of Christ" (*GE* 3), but which is also to "promote for all peoples the complete perfection of the human person" (ibid.).

This gives rise to the right to carry out activities designed for this purpose by using necessary means. Further, Christian education specifically ensures that the baptized will be "gradually introduced to a knowledge of the mystery of salvation" and thus "they should come to true adulthood, which is proportioned to the completed growth of Christ" (*GE* 2). This does not mean that a genuinely human education is renounced, but rather that it is presupposed (*GE* 2). From this, it follows that this supernatural claim reinforces the Church's right, with respect to human society, to impart an education that embraces all the dimensions of the human person.

On the other had, this does not prevent the sphere proper to its educational mission, to which the Church claims *exclusive* right, from being described in c. 747 as everything related to the proclamation of the Gospel.

"In fulfilling its educational role, the Church, eager to employ all suitable aids, is concerned especially about those which are its very own. Foremost among these is catechetical instruction ... The Church esteems highly and seeks to penetrate and ennoble with its own spirit also other aids which belong to the general heritage of all people ..., such as the media of communication, various groups for mental and physical development, youth associations, and, in particular, schools" (*GE* 4).

Paragraph 1, especially if considered in relation to § 2, seems to equate the word "Church" with its hierarchical-institutional dimension;

2. J.M. GONZÁLEZ DEL VALLE, commentary on c. 794, in *Pamplona Com.*

however, since the mission entrusted by Christ is incumbent upon all the faithful (cf. cc. 204 § 1, 211, 216, 225), it is necessary to give the word its broadest meaning here because the canon envisions not only educational activities promoted by the hierarchy, but also initiatives undertaken by the faithful (the clergy, the religious and the laity), individually or in groups, provided these initiatives are always carried out in communion with the pastors (c. 212 § 1).

2. Paragraph 2 is related to the right (recognized under c. 213) of the faithful to receive the help of the spiritual goods of the Church from the sacred pastors. It specifies the pastors' duty to provide everything that is necessary for the faithful to enjoy a Catholic education. As far as its structure is concerned, it is similar to the duty set forth in c. 213 (see commentary on c. 213),[3] and it may be manifested in an extremely varied range of activities intended to ensure the factual existence of these means (cf. e.g. c. 802), but also that they are used to impart an effectively Catholic education. Therefore, this duty of the pastors comes with a corresponding right to supervise and intervene in order to ensure evangelical conformity with initiatives claiming to offer a Catholic education.

3. Cf. C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 35–37.

795 **Cum vera educatio integram persequi debeat personae humanae formationem, spectantem ad finem eius ultimum et simul ad bonum commune societatum, pueri et iuvenes ita excolantur ut suas dotes physicas, morales et intellectuales harmonice evolvere valeant, perfectiorem responsabilitatis sensum libertatisque rectum usum acquirant et ad vitam socialem active participandam conformentur.**

Education must pay regard to the formation of the whole person, so that all may attain their eternal destiny and at the same time promote the common good of society. Children and young persons are therefore to be cared for in such a way that their physical, moral and intellectual talents may develop in a harmonious manner, so that they may attain a greater sense of responsibility and a right use of freedom, and be formed to take an active part in social life.

SOURCES: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 50, 69–71, 83–85 (*AAS* 22 [1930] 49–86); *GE* 1; PAULUS pp. VI, Let. A *maintes reprises*, 8 dec. 1970; PCJP Decl., 10 dec. 1974

CROSS REFERENCES: cc. 217, 1136

COMMENTARY

Davide Cito

This canon is closely related to c. 217 on the right of the faithful to receive a Christian education (see commentary on c. 217), which is the fulcrum of all the norms on education. Unlike c. 217, this canon specifically has to do with the education of children and youth, and it emphasizes in greater detail the aspects that education should cover in order to be a genuine education. It may be surprising that this canon does not expressly mention "catholic education." However, it may be pointed out that catholic education is synonymous with "vera educatio" taught in its fullness (see commentary on c. 793). Further, the term is implicitly contained in the concept of "formation of the whole person," whose ordination for the eternal destiny and the common good of society is specified in the text.

If we compare this canon with the *CIC*/1917 (especially c. 1372), we will appreciate the great progress underlying the wording of this canon,

which is inspired by *Gravissimum educationis* 1, particularly with respect to the change of perspectives on the subject of education.

First of all, it should be emphasized that the conciliar thinking has made it possible to offer a concept of education that is remarkably richer and which encompasses all aspects (physical, moral and intellectual) of the overall maturity of a person. This makes possible a more harmonious, unified vision of the educational process: a vision that, on one hand, broadens the contents of the right-duty of persons involved in children's education, and demands genuine collaboration, on the other hand, among the various persons of different positions that play a role in education (in this sense, cf. c. 796 § 2).

Further, students are no longer considered mere passive receivers of others' teachings; rather, their active role is recognized,[1] to the point that the conciliar document states that "Children and young people have a right to be motivated *(adiuventur)* to develop moral values with a right conscience" (*GE* 1). This canon also uses the phrase "be cared for" (*excolantur*), which, however, does not seem to change the substance of this passage of the conciliar document.

Finally, the centrality of the person with his or her right to obtain an education sufficient for his or her purposes serves as the central point of reference that affects the juridical position of persons who are to carry out this function.

1. F. RETAMAL, "La misión educadora de la Iglesia," in *Seminarium* 35 (1983), p. 564.

CAPUT I
De scholis

CHAPTER I
Schools

796 **§ 1. Inter media ad excolendam educationem christifideles magni faciant scholas, quae quidem parentibus, in munere educationis implendo, praecipuo auxilio sunt.**

§ 2. Cum magistris scholarum, quibus filios educandos concredant, parentes arcte cooperentur oportet; magistri vero in officio suo persolvendo intime collaborent cum parentibus, qui quidem libenter audiendi sunt eorumque consociationes vel conventus instaurentur atque magni existimentur.

§ 1. Among the means of advancing education, Christ's faithful are to consider schools as of great importance, since they are the principal means of helping parents to fulfil their role in education.

§ 2. There must be the closest cooperation between parents and the teachers to whom they entrust their children to be educated. In fulfilling their task, teachers are to collaborate closely with the parents and willingly listen to them; associations and meetings of parents are to be set up and held in high esteem.

SOURCES: § 1: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 76 (*AAS* 22 [1930] 49–86); PIUS pp. XII, Alloc., 31 dec. 1956; *GE* 5
§ 2: PIUS pp. XII, Alloc., 5 ian. 1954; *GE* 7; SCCE Instr. *La Scuola Cattolica*, 19 mar. 1977, 73

CROSS REFERENCES: cc. 217, 793 § 1

COMMENTARY

Davide Cito

1. This canon reiterates the right-duty of parents to educate their children and considers schools to be instruments that help carry out this task.

The parent's central position (which has already been affirmed elsewhere in the code with respect to both education in general and Christian education: cf. cc. 226 § 2, 774 § 2, 793 § 1; 1055, 1136) is reconfirmed and applied here to the relationship between family and school.

This approach entails the need to avoid two extremes that would be harmful to the parents' role in education: on the one hand, a school system that illegitimately claims to replace family education or, worse yet, conflicts with family education; and, on the other hand an indifferent or negligent attitude on the part of parents which would suppose a type of implicit delegation of their educational responsibility to schools of whatever kind.

This canon recommends that the faithful "are to consider schools as of great importance." This recommendation has special importance for Christian parents, since by virtue of the peculiar relationship they have with their children, they have the primary natural right-duty to provide for their education. It is incumbent upon parents more than anyone else to ensure, individually or collectively, that the school really is a "principal means" of this duty. They are to do so through promotion, management or involvement initiatives—the fruit of their responsibility as citizens and as faithful (cf. c. 225 § 1)—to ensure an educational project that is consistent with the Gospel and their own convictions.

Further, carrying out the task of education as described in c. 795 is a complex matter, especially in today's circumstances. Although it is primarily incumbent upon parents, to a large extent it goes beyond their capabilities and requires the services of various people playing different roles. The invitation with which the canon opens, which makes all the faithful equally responsible regarding educational institutions, should be interpreted from this point of view.[1] Although the canon has an exhortatory tone, which in itself does not give rise to any immediate duties, it does have canonical effects. In fact, the canon, in addition to specifying a concrete (and in some ways privileged) environment in which to exercise apostolic action (cf. c. 211) and to infuse the temporal order with a Christian spirit (cf. c. 225 § 2), legitimizes actions taken by the faithful (clergy, religious and the laity) to collaborate in the action taken by parents. Such supporting action takes on quite varied forms, from professional teaching or other work in schools to participating in or furthering educational entities set up to found and run schools, etc. Nor can pastors offer the faithful, through preaching (cf. c. 768 § 2) and other means, a Christian formation to help them responsibly exercise their own rights and duties in the area of education.

3. The canon defines the relationship between family and school by saying that schools are a "principal means of helping parents" to fulfill

1. Regarding laity in particular, cf. SCCE, *Lay Catholics in schools: witnesses to faith*, October 15, 1982, text with Italian translation in *EV* VIII, pp. 262–341.

their role in education. This term encompasses two intimately related aspects. The first, which we have already mentioned, is the primary and unrenounceable role of the family in education, which precludes schools from being some sort of comprehensive substitute. The second becomes clear by virtue of the very concept of a subsidiary function (which is implied by the term "helping"): integrating, complementary action is necessary to prevent breaks that could compromise the effectiveness of the right of the faithful (in this case, children), to a Christian education (cf. c. 217). The protection and effective exercise of this right are entrusted to the family above everyone else.

To attain this goal, § 2 invites parents and teachers to cooperate closely (*arcte cooperentur*). The term "cooperation" implies the acknowledgment and mutual respect of the respective duties as well as mutual collaboration. Teaching, which is professional work that requires specific preparation, enjoys its own autonomy. Families should respect this autonomy by refraining from improper interference. At the same time, the teachers' instructional efforts would be harmful, or at the very least poorly effective, if their efforts marginalized or contradicted parents, especially in areas related to fundamental orientations. Thus it follows that there is a need for an active collaboration, as promoted in § 2, which describes this collaboration in very vague terms. This vagueness is necessitated by the vast variety of situations in which the faithful are involved and the freedom they enjoy to promote this collaboration. In fact, the canon limits itself to emphasizing teachers' duty to "willingly listen" to parents and recommending that parents' associations and meetings are to be established and held in high esteem as a means of realizing a more incisive family input into educational institutions.

The effective collaboration between families and schools is both necessary and difficult. It is precisely for this reason that it seems to be important for the faithful to take pains to implement educational initiatives in which the plan for Christian education harmoniously inspires parents and teachers.

797 **Parentes in scholis eligendis vera libertate gaudeant oportet; quare christifideles solliciti esse debent ut societas civilis hanc libertatem parentibus agnoscat atque, servata iustitia distributiva, etiam subsidiis tueatur.**

Parents must have a real freedom in their choice of schools. For this reason Christ's faithful must be watchful that the civil society acknowledges this freedom of parents and, in accordance with the requirements of distributive justice, even provides them with assistance.

SOURCES: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 60, 63–64 (*AAS* 22 [1930] 49–86); *GE* 6

CROSS REFERENCES: c. 793 §2

COMMENTARY

Davide Cito

1. "Parents, who have the primary and inalienable right and duty to educate their children, must enjoy true liberty in their choice of schools. Consequently, the public power, which has the obligation to protect and defend the rights of citizens, must see to it, in its concern for distributive justice, that public subsidies are paid out in such a way that parents are truly free to choose according to their conscience the schools they want for their children" (*GE* 6). Canon 797 is a condensed version of the conciliar passage and an application of c. 793 § 2 regarding the assistance that civil society should provide to parents in their educational task.

2. The canon touches on three crucial areas related to "freedom in their choice of schools," an issue that is much debated, much less resolved, in many civil systems.

It should not be surprising that the Church in its code sanctions rights that are primarily exercised in civil society, since the Magisterium is not limited to supernatural revealed truth (cf. c. 747 § 1), but also encompasses precepts of natural law (cf. *VSp*, 64). This is a consequence of the close harmony—compatible with reciprocal autonomy—that exists between the temporal order and the religious order.

The Church, in claiming freedom of choice of schools, is not only seeking freedom for its own actions which is specifically mentioned in c. 800 § 1, but also proclaims rights arising from human dignity and which are therefore due every person: rights that should be properly acknowledged and protected in civil society.

To be sure, the code is directed to the faithful, but c. 797 refers to rights to which the faithful are entitled above all as citizens, although these rights have intraecclesial relevance. Also, the Church takes no position regarding any specific technical solution, but rather, limiting itself to its sphere of competence (the principles of natural law), recognizes that it is incumbent upon the interested parties to find satisfactory practical solutions, which may differ greatly from each other and at the same time all be good, provided they respect human dignity.

3. The first affirmation made in c. 797 has to do with the freedom of choice of schools, a right held by parents and those who take their place. This right is an immediate consequence of parents' basic right to educate their children and of the subsidiary role of the schools with respect to the parents' educational responsibility.

The contents of the right in question consistof the *actual possibility* of freely choosing a school with an educational program consistent with their convictions.

This entails, in the first place, acknowledging the rights of citizens and intermediate groups to set up and run schools with a specific educational curriculum and precludes, as contrary to natural law, any intent by public authorities to establish a monopoly on education.

The canon's affirmation should not be understood as an indication of lack of confidence in public schools; it arises instead from the conviction that social initiative is an indispensable condition for attaining the common good, since the common good links the freedom and responsibility of everyone. In order to understand this assertion, it is necessary to rediscover the true social dimension of personal initiative, which the government should protect and promote, at the same time correcting any abuses that arise.

It is necessary that the exercise of this right not be materially hindered. This would be the case if citizens' educational initiatives were subject to unjust and burdensome requirements that do not in fact make a choice of the preferred school accessible to everyone. In practice, this would be unfair discrimination in a fundamental right that is openly recognized in numerous international declarations that are a part of the legislation of the majority of governmental systems.[1]

From this it follows that the faithful, especially the laity, by virtue of their status as citizens and baptized persons and in accordance with

1. Cf. UN General Assembly, *Declaración Universal de los derechos del hombre*, December 10, 1948, art. 26; UN General Assembly, *Pacto Internacional de derechos civiles y políticos*, December 16, 1966, art. 18 §4; UN General Assembly, *Pacto Internacional de derechos económicos, sociales y culturales*, December 16, 1966, art. 13; European Parliament, *Resolución sobre la libertad de enseñanza en la Comunidad europea*, March 14, 1984.

c. 225 § 2, have the duty, and clearly no small duty, to persuade civil society to recognize parents' freedom in this area. Each of the faithful has the freedom to determine concrete ways of doing so, i.e., no one is obligated to any particular technical or political option.

4. Finally, the canon points out the requirements of distributive justice- that odious inequalities among citizens be prevented.

These inequalities are not infrequent, whenever the government—while recognizing the legitimacy of a pluralistic school system—forces those who wish to use non-public educational institutions to contribute, by paying taxes, toward the expenses of public schools and at the same time bear the full financial burden of said non-public schools. This situation sets up a system that only allows the classes that are better off financially to enjoy true freedom in choosing a school and slights the social value and contribution to the common good made by schools founded by social initiative. The grave inequality of treatment of persons wishing to exercise a right of freedom proclaimed in the abstract, but denied in reality is obvious.

In order to overcome this unjust situation, the canon limits itself to stating that freedom of religion should be protected by a civil society "even with financial assistance." This general term is used to avoid favoring any of the various technical solutions that have been promoted to resolve the problem (school subsidies, vouchers, tax credits, etc.), and at the same time makes clear the offensive reality and seriousness of the problem, which begs for legislative review in many governments.

798 Parentes filios concredant illis scholis in quibus educationi catholicae provideatur; quod si facere non valeant, obligatione tenentur curandi, ut extra scholas debitae eorundem educationi catholicae prospiciatur.

Parents are to send their children to those schools which will provide for their Catholic education. If they cannot do this, they are bound to ensure the proper Catholic education of their children outside the school.

SOURCES: c. 1374; *GE* 8; *AA* 30; SCCE Instr. *La Scuola Cattolica,* 19 mar. 1977, 73

CROSS REFERENCES: c. 793 § 1

COMMENTARY

Davide Cito

1. Canon 1374 *CIC*/1917 prohibited parents from sending their children to non-Catholic, neutral or mixed schools unless permission is obtained from the local ordinary and precautions prescribed by the Holy See are taken to avoid the danger of perversion.

The current norm updates this matter. Proceeding from the parents' right to provide their children with a Catholic education, it specifies the procedure that is to be followed in choosing a school to fulfill this duty.

The legislator invites the faithful to entrust their children to those schools that provide a Catholic education. The word used (*concredant*) goes beyond a simple recommendation, since in the Church the duty to give children a Christian education is set forth as a genuine juridical obligation of parents, and failure to do so may constitute a delict under c. 1366.

Consequently, this canon constitutes a mandatory provision, even though its contents are broad, since evaluation of the means and the choice of the best institutions that will provide a Catholic education for their children (c. 793 § 1), as well as the specific circumstances affecting the choice, are primarily the responsibility incumbent upon the parents themselves. In this respect, parents are also subject to any particular legislation, as well as the decision made in harmony with the Gospel message, which the competent ecclesiastical authority has the right, and often the duty to make concerning specific educational institutions (cc. 209, 747 § 2), for the good of the faithful entrusted to said authority.

Thus to the extent of their means, parents are obligated to send their children to "those schools which will impact Catholic education." The canon does not use the term "Catholic school," but rather the more generic phrase, "schools which will impact Catholic education." After an exhaustive debate on the definition of a Catholic school during the revision of the Code,[1] this wording was appropriately adopted to emphasize the fundamentals of Catholic education, among other reasons. Accordingly, the technical concept of a Catholic school was limited and at the same time it was recognized that other educational centers exist that may be considered effectively Catholic (c. 803 § 3), even though they may not fit into this formal definition (c. 803 § 1).

2. In an attempt to determine which schools can be considered "schools which will impact Catholic education," we should mention three categories: Catholic schools in a formal sense; schools with an institutional Christian-inspired curriculum, whether they are sponsored by private entities or public ones; and schools that, although describing themselves as non-Catholic or pluralistic, do in fact provide a Catholic education, thanks to an active presence of Catholic parents and teachers.

Finally, it could be asked whether a class on Catholic religion would be sufficient to meet the requirements for a school that provides a Christian education. In the light of what *Gravissimum educationis* 8 says on the characteristic feature of such schools, i.e., "understanding every human culture in the light of the message of salvation so that knowledge of the world, life and humankind that the students gradually learn is illuminated by faith," it seems, in principle, that an affirmative answer cannot be given, even without forgetting that religious teaching is the most important aspect of Christian instruction in school, and its presence therefore guarantees a minimum of Catholic formation.

There is one condition that releases parents from the obligation to send their children to schools "which impact Catholic education": "if they cannot do this" ("quod si facere non valeant"). It would be practically impossible to try to list the cases in which this condition would arise, since the canon does not refer to an objective impossibility (lack of schools, distance, financial impossibility, etc.), but rather leaves an evaluation of the actual possibilities up to parents. Only guidelines can be given, and involves judging circumstances in the light of directives of the ecclesiastical authority and proceeding on the basis of the "most serious" obligation (c. 226 § 2) to give their children a Christian education.

3. The last part of the canon imposes on parents the duty to provide a Catholic education for their children outside school if not taught in school. This provision should be interpreted as conferring special gravity of the obligation in the situation being considered. Thus, parents' funda-

1. *Comm.* 15 (1988), pp. 171–176.

mental obligation to give their children a Christian education is not lessened at all. In no way are they released from this duty by sending their children to a Catholic school,[2] given the subsidiary nature of such an education, even in regards to a specifically Catholic education (c. 796), in comparison to the education imparted by the family.

2. SCCE, Instr. *L'école catholique*, March 19, 1977, no. 73.

799 **Christifideles enitantur ut in societate civili leges quae iuvenum formationem ordinant, educationi eorum religiosae et morali quoque, iuxta parentum conscientiam, in ipsis scholis prospiciant.**

Christ's faithful are to strive to secure that in the civil society the laws which regulate the formation of the young, also provide a religious and moral education in the schools that is in accord with the conscience of the parents.

SOURCES: *GE* 7

CROSS REFERENCES: c. 225 §2

COMMENTARY

Davide Cito

1. Once again, we have a canon regulating conduct that has specific canonical importance, but which affects civil society almost exclusively. In this case, it has to do with the faithful's effort to secure governmental legislation guaranteeing moral and religious education in schools in accordance with parents' conscience.

In the light of the conciliar source of the canon (*GE* 7), it can be deduced that the norm's immediate intent is not to protect educational initiatives inspired by religion, especially Catholicism. The canon posits a broader goal of seeing that a moral and religious education in harmony with parents' convictions is given children in public schools. This has particular importance for the Church, since "feeling very keenly the weighty responsibility of diligently caring for the moral and religious education of all its children, the Church must be present with its own special affection and help for the great number who are being trained in schools that are not Catholic" (*GE* 7).

The faithful's efforts should thus be directed at securing recognition that moral and religious education is an essential component of the schools' educational curriculum—since it is part of the human person's right to an education—thereby preventing it from being relegated to non-school environments. It is also an aspect of the right to religious freedom of not only individuals, but also of the family and intermediate groups.

It is also a matter of something that is provided under numerous national and international documents and something the Church never

ceases to proclaim in the interest of fundamental human rights, not just the good of the faithful (*GS* 76).[1]

2. The ecclesial aspect of the canon consists of a moral duty and corresponding right to freely choose the appropriate ways and means of fulfilling this duty. It is a duty of great importance, as the last ecumenical council has repeatedly pointed out. In fact, as *Gaudium et spes* 43 affirms, "the council exhorts Christians, as citizens of two cities, to strive to discharge their earthly duties conscientiously and in response to the Gospel spirit. They are mistaken who, knowing that we have here no earthly city but seek one which is to come, think that they may therefore shirk their earthly responsibilities. For they are forgetting that by the faith itself they are more obliged than ever to measure up to these duties, each according to his proper vocation."

This duty is especially applicable to the lay faithful, whose inherent (but not exclusive) mission (*GS* 43) is to order temporal realities according to God (cf. c. 225 § 2). However, *juridically* it constitutes a *right to freedom in temporal action*, in which the faithful act under their own personal initiative, not as representatives of the Church.

This is due to two series of reasons. In the first place, the Church's mission is religious, and as such, it should never be confused or identified with a given culture, political system or specific viewpoint on temporal realities. In fact, it is incumbent upon the Church to lay down moral and doctrinal guidelines that are certainly binding on the faithful, but not to provide technical solutions to various problems that arise. In the second place, when the faithful take action in the area of politics, they are exercising their rights as citizens, not by virtue of the fact that they belong to the Church.

Distinguishing these two aspects is critical in situations like this one, where fulfilling a serious duty of morality and natural law has important repercussions on social and political life in order to avoid both confusion of the Gospel message with a given political action program and claiming to represent the Church in certain temporal circumstances (which are subject to differing opinions), a role which neither the faithful nor groups of the faithful have the right to claim for themselves.

Finally, it should be pointed out that the diverse situations of the faithful (clergy, religious and the laity) affect how they exercise their right of freedom in temporal things, since it must be compatible with other factors affecting their choices (cf. cc. 285 § 3, 287 § 2).

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1. Cf. UN General Assembly, *Déclaration des droits de l'enfant*, November 20, 1959, principle 7; UN General Assembly, *Déclaration sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion ou la conviction*, November 25, 1981, art. 5 §§ 1–2.

800 **§ 1. Ecclesiae ius est scholas cuiusvis disciplinae, generis et gradus condendi ac moderandi.**

§ 2. Christifideles scholas catholicas foveant, pro viribus adiutricem operam conferentes ad easdem condendas et sustentandas.

§ 1. The Church has the right to establish and to direct schools for any fields of study or of any kind and grade.

§ 2 Christ's faithful are to promote Catholic schools, doing everything possible to help in establishing and maintaining them.

SOURCES: § 1: c. 1375; BENEDICTUS pp. XV, Let. Ap. *Communes litteras,* 10 apr. 1919 (*AAS* 11 [1919] 172); PIUS pp. XI, Enc. *Divini illius Magistri,* 31 dec. 1929 (*AAS* 22 [1930] 49–86); SCSUS Normae, 28 iul. 1948, 2; IOANNES pp. XXIII, Nuntius, 30 dec. 1959 (*AAS* 52 [1960] 57–59); *GE* 8
§ 2: c. 1379 § 3; *GE* 8, 9; SCCE Instr. *La Scuola Cattolica,* 19 mar. 1977

CROSS REFERENCES: c. 794 § 1

COMMENTARY

Davide Cito

1. Although schools are not one of the *proper* means—like catechesis, for example—which the Church uses to carry out its educational duty, rather they form part of the common patrimony of mankind (*GE* 4). The Church claims for itself the right to establish and direct schools by virtue of its dual entitlement, human and supernatural, that qualifies it to be a subject capable of imparting education (*GE* 3; *DH* 13; c. 794 § 1).

This right is based not only on a solid historical tradition—that has seen the Church as a leader in the promotion and transmission of religious and secular culture—but also on the juridic figure with which the Church presents itself in civil society. As a religious community "established by Christ the Lord, upon which rests, by divine mandate, the duty of going out into the whole world and preaching the Gospel to every creature" (*DH* 13), the Church, in the pursuit of its spiritual purposes, is in an independent, sovereign position with respect to any civil authority, with the consequent exclusive right to shape its ministers (cf. c. 232) by establishing appropriate centers for the purpose and providing a Catholic education at all levels: elementary schools, high schools and universities. "The

Church also claims freedom for itself in its character as a society of individuals who have the right to live in society in accordance with the precepts of the Christian faith" (*DH* 13). This second aspect legitimizes the Church, just like any other educational or welfare entity in civil society, to devote itself to such activities by promoting, at all levels, appropriate educational institutions in various cultural fields. The specific possibilities of doing so and determining what entities can be run by the Church are contingent, among other things, on the juridical recognition received by the Church under different state systems.

2. At the same time, the specific intraecclesial dimension of the canon contains some relevant aspects. Doctrine points out[1] that the present canon, even though it repeats the old c. 1375 *CIC*/1917 almost word for word, has relevant innovations because of the ecclesiological approach shaped by Vatican Council II. In fact, if the term "Church" was considered before mainly in its institutional dimension, the view now more comprehensively encompasses the dimension of the people of God as a community in which not just the hierarchy, but all the people actively participate in the only mission Christ entrusted to his disciples. From this it follows that the Christian community as such has the right in question. This entails the right of the *christifideles* to found educational entities imbued with the Gospel message as a manifestation of charisms present in the people of God and as an exercise of the right-duty to spread the proclamation of salvation (cf. c. 211).

3. As far as promotion of these initiatives is concerned, the ecclesiastical hierarchy is in a position of helping and complementing (c. 802), but obviously, this does not imply a limitation on its primary and irrevocable power-service in areas involving both the integrity of the faith and ecclesial communion.

The juridical aspect of schools promoted by the faithful may take on quite varied forms in both the canonical and the civil purviews, depending on the promoting subject and its intention, as well as possibilities available under governmental legislation.

4. As far as schools with an authentic Catholic curriculum are concerned, the juridic position of the faithful is configured not only as a right to freedom that entitles the faithful to provide assistance to the extent of each one's means, but also as a duty of co-responsibility. This is to say, the faithful not only have the *right*, but also a certain generic duty to cooperate in the task of "establishing and directing" in whatever seems to be the most appropriate way. There is a wide range of ways to cooperate: these ways are not confined to financial contributions, but also include any

1. G. DALLA TORRE, *La questione scolastica nei rapporti fra Stato e Chiesa*, 2nd ed. (Bologna 1989), p. 15.

activity, professional or not, that helps with the founding and development of these schools.

The canon uses the phrase “Catholic school” (§ 2); however, this phrase does not mean only the schools covered by the formal definition given in c. 803 § 2, but also in accordance with cc. 798 and 802, all educational centers that are in fact substantially Catholic schools, regardless of their juridical, civil or canonical status.

801 **Instituta religiosa quibus missio educationis propria est, fideliter hanc suam missionem retinentes, satagant educationi catholicae etiam per suas scholas, consentiente Episcopo dioecesano conditas, sese impendere.**

Religious institutes which have education as their proper mission are to keep faithfully to this mission and earnestly strive to devote themselves to Catholic education, providing this also through their own schools which they have established with the consent of the diocesan Bishop.

SOURCES: PIUS pp. XI, Let. *Procuratores generales,* 31 mar. 1954 (*AAS* 46 [1954] 202–205); *CD* 35: 4; *ES* I, 39 § 1; SCCE Decl., 1 feb. 1971 (*AAS* 63 [1971] 250–251); SCCE Instr. *La Scuola Cattolica,* 19 mar. 1977, 74–76, 89

CROSS REFERENCES: cc. 578, 677 § 1

COMMENTARY

Davide Cito

Since the initiative of the faithful in the area of education is to take place through the harmonious interaction of each person's charisms, the *CIC* devoted "ex professo" a canon to educational activity carried out by religious.

The legislator's urgent invitation to religious institutes "which have education as their proper mission" not only rests on their very important role in this area that they have been fulfilling for centuries, but is also a requirement of faithfulness to the charisms of these institutes (cf. cc. 578, 677 § 1). The exercise of these charisms contributes greatly to the building up of the Church, even when particular historical circumstances would seem to suggest abandonment.[1] It seems that the canon refers to religious institutes only, and not to other institutes of consecrated life or societies of apostolic life. It seems this is what can be deduced both from the term used which delineates *a particular type* of institute of consecrated life, and the legislator's intent. In fact, the *Schema,* 1982 substituted the phrase "institutorum vitae consecratae" which appeared in the *Schema* 1980 (c. 760 § 1, of this schema is the counterpart of the current c. 806 § 1) with

1. SCCE, Instr. *L'école catholique,* March 19, 1977, nos. 74–76; SCCE Document *La dimensione religiosa dell'educazione nella scuola cattolica,* April 7, 1988, no. 36; *MR* 40.

the phrase "institutorum religiosorum" which was retained in the final text of the *CIC*

It is not possible to find the reason for the legislator's decision in the current available documentation on the work of revision. On the other hand, it does not seem to have much relevance, since the educational mission of the other institutes of consecrated life and societies of apostolic life is fully contained in both the active recommendation which c. 796 directs to all the faithful and in the norms provided for Catholic schools.

The assessment of the circumstances and opportunities to dedicate their work to Catholic education is left to the interested religious institutes. The canon does not specify specific ways of carrying out this duty, other than the indication that it can also (*etiam*) be done through their own schools.

This gives rise to a wide range of possibilities, including agreements with public or private entities to take charge of teaching, in whole or in part, at a school or providing certain formation support. Also, the diocesan bishop may entrust certain educational work to religious institutes according to c. 681. Finally, the religious institutes themselves may establish and direct their own schools.

In this last case, the consent of the diocesan bishop is required. This rule is understandable, since the apostolate of the religious institutes is always exercised "nomine et mandato Ecclesiae" (c. 675 § 3), and this is a public act of the Church, whose moderator is the diocesan bishop (cf. *MR* 9).

This requirement, then which was not in the superseded legislation, should not be understood as a limitation on the religious to pursue their own mission as if there were a conflict of rights, but is rather encompassed in the service bishops provide to the ecclesial "communio." This service consists of promoting and encouraging the exercise of authentic charisms within an organic apostolic action of the Church.

In this sense, the norm goes back to a provision in *Christus Dominus* 35, 4: "All Religious are subject to the authority of the local ordinary in the following matters: public worship, without prejudice, however, to the diversity of rites; the care of souls; preaching to the people; the religious and moral education of the faithful, especially of children, catechetical instruction and liturgical formation, and decorum of the clerical state, as well as the various activities relating to the exercise of their sacred apostolate."

For the reasons given above, and similarly to c. 806 § 1 concerning the bishops' right to watch over and inspect Catholic schools, it does not seem that the diocesan bishop's consent is necessary only for founding his own school, but extends also to instances in which schools founded by another entity become schools "belonging" to a religious institute. In order

for a school to be considered, for canonical purposes, as belonging to a religious institute, the person who is responsible for its direction and administration must be determined: responsibility must be incumbent upon the institute itself, regardless of who owns the property.

The juridical relationships between a school run by a religious institute and the diocesan authority are described in *Christus Dominus* 35, 4 and subsequently specified by *Ecclesiae Sanctae* 39 § 1 as follows: "Catholic schools conducted by religious are also subject to local Ordinaries as regards their general policy and supervision without prejudice, however, to the right of the religious to manage them." The harmonious connection between two principles is thus made explicit: *a*) the bishops' right-duty to determine the general rules under which the apostolate is undertaken in the Church's name and to watch over its actual implementation and, *b*) the right of religious to live their own charism and their own spirituality in the exercise of an educational mission, a right that implies a level of autonomy necessary to direct and administer school activities.

802 **§ 1. Si praesto non sint scholae in quibus educatio tradatur christiano spiritu imbuta, Episcopi dioecesani est curare ut condantur.**

§ 2. Ubi id expediat, Episcopus dioecesanus provideat ut scholae quoque condantur professionales et technicae necnon aliae quae specialibus necessitatibus requirantur.

§ 1. If there are no schools in which an education is provided that is imbued with a Christian spirit, the diocesan Bishop has the responsibility of ensuring that such schools are established.

§ 2. Where it is suitable, the diocesan Bishop is to provide for the establishment of professional and technical schools, and of other schools catering for special needs.

SOURCES: § 1: c. 1379 § 1
§ 2: *GE* 9; *DPMB* 66

CROSS REFERENCES: —

COMMENTARY

Davide Cito

1. The first paragraph of the canon, whose immediate source is c. 1379 § 1 of the *CIC*/1917, constitutes a case where the Church's function is supplementary. In fact, the bishop's responsibility for the ministry of the word of God *in a strict sense* is direct and primary (c. 756 § 2), and should have sufficient means so that all the faithful may abundantly receive the spiritual goods of the Church (*LG* 37; c. 213). But the canon assumes that this activity (establishing and administering schools) is primarily incumbent upon the faithful. The hierarchy takes a direct initiative when the faithful act insufficiently or do not act at all.

Consequently, the function of pastors with respect to the educational activities of the faithful is subject to the principle of subsidiarity. In fact, pastors should encourage and assist the faithful's initiatives in this area, through timely formation, taking into account each person's charisms and personal situation, to enable them to found schools responsive to the evangelical spirit. If this is not enough, it may be due to several factors, not necessarily poor diligence on the part of pastors or the faithful. It is often due to objective circumstances that make such initiatives extraordi-

narily burdensome. It falls upon the diocesan bishops to serve in a supplementary role to ensure that these schools are founded.

The canon states that the supplementary function by the pastors in the area of education is where there is a lack of schools informed by the Christian spirit: "Si praesto non sint scholae in quibus educatio tradatur spiritu christiano imbuta."

Two points should be made in this regard: *a*) a lack should not be understood in a restrictive sense, as if an absolute lack of schools of this type were necessary, but rather it should be prudently evaluated by the bishop, taking into account the actual needs of the portion of the people of God entrusted to his pastoral care as seen in the light of the primary right of every faithful to receive a Catholic education and of a missionary outreach of the Church; *b*) the concept of "a school imbued with the Christian spirit" refers to the substance of the environment and the school's educational orientation, regardless of its canonical or civil juridical status.

If these assumptions are accepted, the bishop should "ensure they are established." This does not mean just founding schools dependent on Church authority, which can be deduced from the phrase "curare ut condantur," but rather any action that results in the effective existence of schools with a Catholic curriculum.

2. Similar comments may also be made about § 2. The insertion of this paragraph (which comes from *GE* 9, and was not in the earlier Code) should be understood in terms of the great current development of technical and professional schools and a growing awareness of having adequate education and formation of various social sectors that in general do not receive proper attention, which is due to the insufficiency of infrastructure and specialized personnel, among other reasons.

In this second area, *Gravissimum educationis* 9, by way of an example, mentions "institutes for adult education and for the promotion of social work, and institutions for those who require special care on account of some natural disability."

803 **§ 1. Schola catholica ea intellegitur quam auctoritas ecclesiastica competens aut persona iuridica ecclesiastica publica moderatur, aut auctoritas ecclesiastica documento scripto uti talem agnoscit.**

§ 2. Institutio et educatio in schola catholica principiis doctrinae catholicae nitatur oportet; magistri recta doctrina et vitae probitate praestent.

§ 3. Nulla schola, etsi reapse catholica, nomen *scholae catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae.

§ 1. A Catholic school is understood to be one which is under the control of the competent ecclesiastical authority or of a public ecclesiastical juridical person, or one which in a written document is acknowledged as Catholic by the ecclesiastical authority.

§ 2. Instruction and education in a Catholic school must be based on the principles of Catholic doctrine, and the teachers must be outstanding in true doctrine and uprightness of life.

§ 3. No school, even if it is in fact Catholic, may bear the title 'Catholic school' except by the consent of the competent ecclesiastical authority.

SOURCES: § 1: SCCE Instr. *La Scuola Cattolica*, 19 mar. *1977*, *33–37*, 71
§ 2: PIUS pp. XI, Enc. *Divini illius Magistri*, 31 dec. 1929, 77–79 (*AAS* 22 [1930] 49–86); PIUS pp. XII, Alloc. 14 sep. 1958 (*AAS* 50 [1958] 696–700); *GE* 8, 9; *AA* 30; SCCE Instr. *La Scuola Cattolica*, 19 mar. 1977, 33–37, 43, 49, 71, 73, 78
§ 3: *AA* 24

CROSS REFERENCES: cc. 216, 808

COMMENTARY

Davide Cito

The canon establishes the formal and substantial elements that canonically define the concept of a Catholic school.

1. There was a long debate during the revision work in which two trends were at odds: one identified Catholic schools by the criteria of

contents; the other, by linking them to the ecclesiastical authority.[1] This debate did not end in any results during the first phase of the work on the reform of the Code. In fact, the canon does not appear in the 1977 *Schema*: it was added beginning with the 1980 *Schema*. The current wording, which is almost identical to the 1980 text (except for adding the word "competens" in the first part of § 1 to qualify the ecclesiastical authority), was finally agreed on.

The choice made by the legislator has two aspects: on one hand, it was decided to delimit (§ 1) a technical definition of "Catholic school" by defining the positive intervention of the ecclesiastical authority as its characteristic element, without which no school entity can be juridically qualified as Catholic; on the other hand, essential aspects are described (§ 2) that define its substantial reality and which constitute the indispensable presumption for recognizing a school as Catholic.

2. Paragraph 1 distinguishes two types of "Catholic" schools for canonical purposes: those that "ipso facto" acquire such juridical status by virtue of a link institutionally connecting the administering entity with the ecclesiastical authority; and those that receive the qualification (which is not the same as "name," which is treated in § 3, as well as in cc. 216 and 808) as a "Catholic school" under a written act issued by the ecclesiastical authority.

The first group includes teaching centers "which are under the control of the competent ecclesiastical authority or of a public ecclesiastical juridical person"; the second group, on the other hand, may include schools founded or administered by private associations of the faithful or by public or private civil entities or by groups of the faithful without canonical juridic personality, provided they have requested and obtained juridical recognition as a "Catholic school."

Since the Catholic school constitutes a particular form of the official and public presence of the Church in the educational field (*GE* 6), it follows that recognition of one of the schools mentioned in the second category as "Catholic" is dependent not only on its internal character—which must meet the requirements given in § 2—but also that the ecclesiastical authority have the effective possibility of intervening directly in the school entity when needed to ensure its Catholic identity (but only in such a case and for such purpose). In any case, under c. 806 § 1, it is incumbent upon the diocesan bishop to establish requirements for a school to be recognized as "Catholic," although this does not preclude (on the contrary, it would seem to be desirable) that requirements be the same for schools located in the territory of a given bishops' conference.

1. Cf. R. CASTILLO LARA, "Le Livre III du *CIC* de 1983. Histoire et principes," in *L'Année canonique* 31 (1988), pp. 23–25.

On the other hand, recognition as such is an administrative act that falls under the competence of the local ordinary.

3. The juridical status of a Catholic school must be matched by a substantial reality of a Christian educational community. This is what is established in § 2, which sets forth the essential requirements for the fundamental educational orientation—in the two dimensions of instruction and formation ("institutio et educatio")—and for the personal qualities of the teachers, who should be outstanding in right doctrine and uprightness of life.

With respect to the first requirement (which has to do with instruction and formation), notable progress should be pointed out with respect to c. 1373 *CIC*/1917, which was limited to prescribing, in both paragraphs, the existence of religious instruction in elementary and middle schools. This progress is due to the Council's reflections; "the declaration *Gravissimum educationis* signifies—in effect—a decisive turn in the history of Catholic schools: a transition from school/institution to school/community."[2]

In no. 8 of this declaration we find a description of the character of the Catholic school in the following terms: "Catholic schools are no less zealous than other schools in the promotion of culture and in the human formation of young people. It is, however, the special function of the Catholic school to develop in the school community an atmosphere animated by a spirit of liberty and charity of the Gospel. It helps young people, while developing their own personality, to grow at the same time in that new life which has been given them in baptism. Finally it so orients the whole of human culture to the message of salvation that the knowledge which pupils acquire of the world, of life and of humanity is illuminated by faith." It is thus a matter not only of a school that imparts the teaching of the Catholic religion (see commentary on c. 798), but of an entire project into which, in the light of the Gospel, are infused the cultural knowledge and the life of the various components in the educational community (teachers, non-teaching personnel, parents and students).

4. From this comes the importance of the qualities to be attributed to teachers, who are the cornerstone of educational institutions: "Splendid, therefore, and of the highest importance is the vocation of those who help parents in carrying out their duties and act in the name of the community by undertaking a teaching career. This vocation requires special qualities of mind and heart, most careful preparation and a constant readiness to accept new ideas and to adapt the old" (*GE* 5).

In addition to professional competence—which should be at the very least comparable to the competence of other schools' teachers (cf. c. 806

2. Cf. SCCE, Document *La dimensione religiosa dell'educazione nella scuola cattolica*, April 7, 1988, no. 31.

§ 2)—§ 2 establishes the moral requirements necessary for a teacher in a Catholic school. Comparing this paragraph with c. 804 § 2—on religion teachers, who should be outstanding "in true doctrine, in the witness of their Christian life, and in their teaching ability"—similarities and differences may be established between religion teachers and teachers of so-called secular subjects.

First, although it is highly desirable that all teachers in a Catholic school be Catholic, the possibility of accepting non-Catholic teachers in subjects other than religion is not totally precluded. This is deduced from the different terminology the two canons use in referring to moral qualities: "uprightness of life" in the first case and "witness of their Christian life" in the second case. We find a confirmation in the Apostolic Constitution *Ex corde Ecclesiae* on Catholic universities,[3] which allows the presence of non-Catholic professors in a Catholic university, provided they are "inspired by principles proper to an authentically human life." However, the educational dimension has a greater weight in schools than the merely cultural dimension. It is therefore proper for schools to make a more restrictive assessment of teachers' qualities than it is for universities, depending also on the type of school (elementary, middle or high schools) and the subject being taught.

Uprightness of life means that personal, family and social behavior is not in contrast with the precepts of natural law as interpreted by the Catholic Church.

The requirement of "right doctrine" (which is required of all professors, regardless of the subject they teach), means, for non-Catholics, adherence to the principles of true natural morality and respect for the Church's doctrine and morals in their teaching (cf. Ap. Const. *Ex corde Ecclesiae*, 4 § 3). The proportion of Catholic to non-Catholic professors should not threaten the Catholic identity of the school (cf. *ibidem*, 4 § 4), but promote evangelization.

In the case of Catholic professors, the requirements of "uprightness of life" and "right doctrine" should be measured not only by the precepts of natural law, but also Catholic doctrine and morality. This greater requirement should not be surprising, since it is a consequence of juridical obligations arising from their full incorporation into the Church.

5. Paragraph 3 of the canon addresses two closely related, but not equivalent, issues: "naming" a school Catholic and the distinction between *de facto* (*reapse*) and juridically Catholic schools. The fact that a school is named a "Catholic school" is not a criterion that is useful for distinguishing between *juridically* Catholic schools and *reapse* Catholic schools.

3. JOHN PAUL II, Ap. Const. *Ex corde Ecclesiae*, August 15, 1990, in *AAS* 82 (1990), pp. 1475–1509.

These are two separate questions having to do with different aspects of the juridical reality of a school.

A *name* is an external cloak under which an educational entity suggesting a Catholic curriculum operates. Given its social relevance and capacity to imply that the substantial reality is consistent with this adjective, requiring intervention by an ecclesiastical authority authorizing its naming as a "Catholic school" is more than reasonable.

Evidently, there is no problem for schools that are considered to be Catholic under § 1. On the other hand, for school undertakings that are not juridically Catholic (even though they may in fact result in schools imbued with an evangelical spirit), a case-by-case study and opportune cautions will be required: there must be sufficient guarantees to maintain their Catholic identity.

However, naming a school a "Catholic school" (with the consent of the competent ecclesiastical authority, which is the local ordinary), is not equivalent to granting it the juridical "status" of a Catholic school pursuant to § 1. If this were not the case, it would be difficult to reconcile the difference in procedures between § 1 and § 3, which require, respectively, acknowledgment "in a written document" and "consent" with no further specifications, at least at the level of the code. Further, a subsequent proof that the two realities are not identical is that juridically Catholic schools do not necessarily include nor are they required to adopt the word Catholic.

Finally, as far as the "reapse catholicae" schools are concerned (a term also used in c. 808 with respect to universities), they are one of the categories of "schools which will provide for their Catholic education" mentioned in c. 798. They may be promoted by public or private entities, and their characteristic is that they have a Christian educational orientation as the stated purpose of their administrative entity.

From the canonical point of view, their existence is related to *Apostolicam actuositatem* 24: "Yet, the lay apostolate allows of different kinds of relations with the hierarchy, depending on the various forms and purposes of this apostolate.

In the Church are to be found, in fact, very many apostolic enterprises owing their origin to the free choice of the laity and run at their own discretion. Such enterprises enable the Church, in certain circumstances, to fulfil its mission more effectively; not seldom, therefore, are they praised and commended by the hierarchy."

Since educational activity is above all a human activity involving the faithful as both parents and citizens (see commentary on c. 796), it is not strange that the possibility of undertakings that are essentially civil in nature and not linked as such to ecclesiastical authority, but suggests an authentic Christian educational curriculum by the force of a commitment by the faithful promoting these undertakings, the Catholic identity of a

school is entrusted. This Catholic identity ultimately depends on meeting the requirements given in § 2.

These institutions, which are the fruit of the personal dedication of the faithful involved, are not of the juridical type of "Catholic schools." Consequently, the canonical norms on Catholic schools do not directly apply to them, since they are governed exclusively by civil norms on schools. However, this does not mean that they are exempt from the control of ecclesiastical authority. This would indicate an insufficient understanding of the pastors' power/service. It simply illustrates the dual way in which the apostolate of the Church may be exercised in the field of education: either through a more or less strong link directly uniting the school entity with the hierarchy (cf. *AA* 24, 4–5) or through an indirect link, i.e., a link under which those receiving the pastors' services are the faithful, upon whom it is then incumbent to make these services operative in the school they are administering. Consequently, the norms on Catholic schools, insofar as they determine the character and the peculiar characteristics that determine their Catholic identity turn out to be an inspiring principle for the "reapse" Catholic schools, and it is incumbent upon the faithful involved to strive to put them into practice. In conclusion, in no way is the bond of communion between the faithful and their own pastors weakened in this case (c. 212 § 1).

The pastors, although it may be impossible for them to participate directly in these schools (since for all purposes they are civil entities), always have the right to voice their opinion as to whether they are in conformance with gospel doctrine—not to mention the direct action they may take with the faithful who administer the institution—in the event of a circumstance harmful to its Catholic identity.

804 **§ 1. Ecclesiae auctoritati subicitur institutio et educatio religiosa catholica quae in quibuslibet scholis impertitur aut variis communicationis socialis instrumentis procuratur; Episcoporum conferentiae est de hoc actionis campo normas generales edicere, atque Episcopi dioecesani est eundem ordinare et in eum invigilare.**

§ 2. Loci Ordinarius sollicitus sit, ut qui ad religionis institutionem in scholis, etiam non catholicis, deputentur magistri recta doctrina, vitae christianae testimonio atque arte paedagogica sint praestantes.

§ 1. The formation and education in the Catholic religion provided in any school, and through various means of social communication, is subject to the authority of the Church. It is for the Episcopal Conference to issue general norms concerning this field of activity and for the diocesan Bishop to regulate and watch over it.

§ 2. The local Ordinary is to be careful that those who are appointed as teachers of religion in schools, even non-Catholic ones, are outstanding in true doctrine, in the witness of their Christian life, and in their teaching ability.

SOURCES: § 1: c. 1381 §§ 1 et 2; SCCouncil Normae, 28 aug. 1924; SCCouncil Litt. circ., 21 iun. 1930 (*AAS* 22 [1930] 395–400); PIUS pp. XII, Enc. *Humani generis*, 12 aug. 1950 (*AAS* 42 [1950] 561–578, 577); SCCE Instr. *La Scuola Cattolica*, 19 mar. 1977, 73
§ 2: SCCouncil Litt. circ., 28 ian. 1924; SCCouncil Resp., 26 iul. 1948; SCR Resp., 26 ian. 1959; *AA* 30; SCCE Instr. *La Scuola Cattolica*, 19 mar. 1977, 43, 78

CROSS REFERENCES: cc. 794, 823

COMMENTARY

Davide Cito

1. The principle of the exclusive competence of the Church with respect to formation and instruction in schools and the various means of social communication is reaffirmed.

This principle is directly related to the mission that has been divinely entrusted to the Church: that "of announcing the way of salvation to all

people, of communicating the life of Christ to those who believe, and, in its unfailing solicitude, of assisting all people to be able to come to the fullness of this life" (*GE* 3; cf. c. 794 § 1). Since this is an instance of "ratione materiae" competence, it is not limited only to schools related in some way to the Church, but extends to any educational institution or public broadcasting medium that claims to impart Catholic formation and instruction.

2. From the point of view of relations between the Church and the political community, the affirmation of this principle tends to have civil laws recognized as inherently incompetent in religious matters so as to guarantee the Church the free exercise of the spiritual mission that has been entrusted to it by Christ.

In its intraecclesial dimension, this principle is an expression of the divine constitution of the people of God: on one hand, it confirms that there can be no transmission of the word of God other than *in Ecclesia*, and on the other hand, it affirms the pastors' function in the service of the faithful spreading of this Word.

3. Certainly, it is not easy to define exactly what the activities encompassed in the phrase "institutio et educatio religiosa catholica" are. It should be taken into account that not just certain specific activities are ascribed to these words, especially "educatio" which in synthesis not only means action intended to mature in disciples a life that is in conformity with the Christian vocation, but also that all the subjective and objective components of the educational process, bar none, are harmoniously included by these words.

It becomes necessary to distinguish between two cases: when such activities take place in a school that institutionally has no Christian orientation; and when said "institutio et educatio" are imparted in a school that—with the diverse necessary juridical nuances (see especially the commentary on c. 803)—proposes educational purposes based on the gospel message.

In the first case, the teaching of the Catholic religion and religious assistance, if provided for, fall under this canon. On the other hand, in addition to these which always have an importance of the first magnitude, all school activities also may be considered as included *to the extent that they concern the faith or morality.* That is to say, not only didactic autonomy and legitimate pluralism with respect to temporal options should be safeguarded, but also the exercise of authentic charisms and the possibility of adopting a specific spirituality in educational activity (c. 214). Thus, the scope of what is considered "education in the Catholic religion" is more extensive in schools of the latter type; this is due precisely to the Christian inspiration of these schools, by virtue of which this scope is not limited to the two activities specifically dedicated to this purpose, but tends to suffuse all school activity.

4. In general terms—general because there is a broad margin so that particular legislation can specify concrete norms, depending on ecclesial circumstances and the type of relationship with the civil system—the fact that Catholic religious "institutio et educatio" are subject to ecclesiastical authority entails at least this consequence: that the religion teachers, those in charge of religious assistance, programs and didactic material for teaching the Catholic religion are subject to determination of suitability by the competent authority, which may legitimately deny said determination when they are in conflict with Catholic doctrine or morality. Similarly, this procedure also applies to religious programs disseminated through any means of social communication.

In the case of schools asserting the teaching of Catholic education, the possibility of intervention of an ecclesiastical authority is greater, since it applies to everything that could cause harm to the authentic Christian character of the school,[1] and it will be exercised either directly or through the faithful directing the school, depending on the school's juridical status.

5. As far as the competent ecclesiastical authority is concerned, in addition to the CCE (cf. *PB* 115), the canon attributes competence in this area to the bishops' conference, the diocesan bishop and the local ordinary. When necessary, the competence of the diocesan bishop and local ordinary should be coordinated with the competence of any personal ecclesiastical authority. This would be necessary, for example, in the case of military schools, where not only those attending these schools (cf. *SMC*, X,3°), but also the location itself, are under the military ordinary's jurisdiction. If it is reserved for the military, it is mainly and primarily under the military ordinary's jurisdiction, and secondarily under the diocesan bishop's jurisdiction (cf. *SMC*, V).

It is for the bishops' conference "to issue general norms concerning this field of activity" in order to coordinate the bishops' pastoral function in a timely manner in an area that requires—by virtue of its social importance and the need to reach agreements with the civil community—"standard norms" on a national level.

It is incumbent upon the diocesan bishop to set the specific norms in this matter, on the basis of guidelines laid down by the bishops' conference, and these norms shall be valid for all kinds of schools in his territory. The diocesan bishop shall also be responsible for seeing that norms are followed and thus has the corresponding right/duty of oversight.

6. Except as provided under c. 806 § 2, the local ordinary is given competence with respect to religion teachers, to whom § 2 of this canon and c. 805 are dedicated.

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1. Cf. SCCE, Instr. *L'école catholique*, March 19, 1977, nos. 74–76; SCCE, Document *La dimensione religiosa dell'educazione nella scuola cattolica*, April 7, 1988, no. 73.

Paragraph 2 sets forth the grave duty of ensuring that "those who are appointed as teachers of religion in schools, even non-Catholic ones, are outstanding in right doctrine, in the witness of their Christian life, and in their teaching ability." These requirements arise from the very character of the subject being taught, since even though it is not the same as catechetical activity, neither is it limited to the mere communication of cultural baggage. The Christian faith—even when considered as a cultural fact—if it is to be transmitted faithfully, necessarily entails, together with a theoretical content, an experience of life that is inextricably intertwined with it: "in the Christian faith, knowledge and life, truth and existence, are intrinsically joined."[2] Thus, "there is an indivisible nexus and at the same time a clear distinction between catechesis and the teaching of religion … The distinction is based on the fact that catechesis, unlike teaching religion in school, presupposes above all the vital acceptance of the Gospel message as a saving reality … and tends to promote spiritual, liturgical, sacramental, apostolic maturation … On the other hand, schools, given the same elements of the Christian message, tend to teach what in fact constitutes the identity of Christianity and what Christians consistently strive to do in their own lives … Said teaching also tries to stress the rational aspect that contradistinguishes and motivates the Christian option of a believer and even more so, the religious experience of people as such."[3]

The generic wording of § 2 (on the local ordinary's oversight of the qualities required of religion teachers) is clear with respect to its fundamental orientation; but, in the absence of further normative specifications, a problem may arise upon attempting to delineate precisely the juridico-canonical status of a teacher and the content of the rights and duties of the juridical relationship that exists between a teacher and the ecclesiastical authority. Nor does the next canon (c. 805) completely clarify the question: in establishing the right of the ecclesiastical authority to intervene in appointing and removing teachers by means of a procedure to affirm or deny suitability (both upon assuming a teaching position and when a relationship already exists). It does not give any further indications on the juridico-canonical qualification which is implied by the "status" of a teacher of the Catholic religion.

In other words, is a religion teacher like any other teacher, with the nuance that the peculiarities proper to the discipline they are teaching bind them in a particular way to approval by the ecclesiastical authority, or does he hold an authentic ecclesiastical office[4] or a generic ecclesial

2. CDF, Instr. *Donum veritatis*, May 24, 1990, no. 1, in *AAS* 82 (1990), p. 1550.

3. SCCE, Document *La dimensione religiosa dell'educazione nella scuola cattolica*, April 7, 1988, nos. 68–69.

4. G. DALLA TORRE, *La questione scolastica nei rapporti fra Stato e Chiesa*, 2nd ed. (Bologna 1989), p. 46.

"munus,"[5] which would confer upon him—at least in the first case—a role as an authorized representative performing a public ecclesial function, since the concept of "munus" has imprecise limits?

The question is proper, since different juridical consequences arise, depending on the position taken on this question. Limiting ourselves for the moment to the beginning of the relationship, if the first hypothesis is argued, it follows that the faithful who meet the requirements for scientific competence, right doctrine and a moral life would have a true right to receive a certificate of suitability and to be able to dedicate themselves to teaching religion in the same way as teachers of any other subjects that have the necessary qualifications. The ecclesiastical authority would exercise a mere control function of doctrine and morals to determine whether the required requirements are met or not. On the other hand, at least in the case of an ecclesiastical office, this would be a situation of fact similar to an administrative law relationship, in which a teacher would be acting in the capacity of a "public official" of the institutional Church. From this it would follow that the ecclesiastical authority would have greater discretion, which would not be limited to a simple verification of doctrinal and moral suitability, but which would assess the advisability, using opportune criteria, of entrusting the office to the applicant, and one could not speak of a full right to obtain the office.

The question, which is substantially analogous to the question that obtains in the case of professors of theological courses at Catholic or ecclesiastical universities and which has provoked a lively debate about the "mandate" or "canonical mission" that is required of them (see commentary on c. 812), cannot be definitively resolved with the elements available to us today. In fact, there are indications that invite us to lean to either side. Thus, on one hand, we find recent statements that include "the teaching of religion in public schools under the principle of cultural and formative dignity equal to that of other disciplines"[6] and claim teachers' rights "by virtue of professionalism shared with the other teachers"[7]; and on the other hand, we find the provision set forth in § 2, which—in allowing assessment of the teacher's "pedagogical aptitude"—turns out to be quite similar to c. 1740, which provides for the removal of a priest when his ministry "has become … harmful or at least ineffective," even though this occurs without any fault on his part.

Limiting ourselves to the canonical scope (i.e., leaving aside the juridical "status" in civil law accorded teachers of the Catholic religion), it

5. G. FELICIANI, "L'insegnamento della religione cattolica nelle scuole pubbliche. Profili canonistici," in *Aggiornamenti sociali* 40 (1989), pp. 361–362.

6. Cf. JOHN PAUL II, "Discorso ai partecipanti al Simposio del Consiglio delle Conferenze episcopali d'Europa sull'insegnamento della religione cattolica nella scuola pubblica," in *L'Osservatore Romano*, April 15–16, 1991, p. 5 (English edition: April 22, 1991, pp. 1–2).

7. Ibid.

seems to me that in order to arrive at a satisfactory solution, it is necessary to take into account that elements intrinsic to the activity itself as well as variable elements (which are due to the life of the Church in the various circumstances that might modify the situation) enter into the juridical status.

The teaching of the Catholic religion *per se*, unlike preaching the word of God or catechesis, should be included in public activities connected with the exercise by the hierarchy of the "munus docendi Ecclesiae." This is so because the instruction is an integral part of the school and for that reason pursues the same type of goals as the school. Its intrinsic character is the same wherever it is exercised, whether the educational institution is Catholic or non-Catholic. None of this prevents it from gravitating, due to contingent factors (e.g., the fact that it is imparted in an educational center linked to the ecclesiastical authority or by virtue of "bonum publicum Ecclesiae") toward the sphere of the Church's public apostolic action, with the pertinent juridical consequences, which, however, do not change its substantial reality, i.e., do not transform it into something else.

Certainly, its intimate link with the Gospel message (which is doctrine and life) distinguishes it from a mere cultural transmission that could be done by anyone with sufficient knowledge and demands that the teacher be an active member of the people of God and participate in their apostolic endeavor. In this sense, it is a way of participating in the "munus" the Church has of proclaiming the Gospel to all peoples (the Church being understood here as not only the hierarchy, but as the community of the faithful), and is thus fully covered under the broad concept of "ecclesial activity," which should not be confused with the "institutional activity of the Church," which is only a part of the former.

Perhaps it is possible to fit the concept of the religion teacher within this framework, safeguarding both their professional identity (which may reach to the highest scientific levels) and their link with ecclesiastical authority, since their teaching, in order to be teaching, can never take place outside an ecclesial context.

805 Loci Ordinario pro sua dioecesi ius est nominandi aut approbandi magistros religionis, itemque si religionis morumve ratio id requirat, amovendi aut exigendi ut amoveantur.

In his own diocese, the local Ordinary has the right to appoint or to approve teachers of religion and, if religious or moral considerations require it, the right to remove them or to demand that they be removed.

SOURCES: c. 1381 § 3; SCCouncil Litt. circ., 28 ian. 1924

CROSS REFERENCES: —

COMMENTARY

Davide Cito

1. This is a consequence of § 1 of the preceding canon. Since the teaching of the Catholic religion is subject to the authority of the Church, the Church has the right—which can be claimed before any human authority, since it is an essential part of the right of religious freedom—to intervene in the appointment of religion teachers and demand their removal if religious or moral considerations require it.

One part of doctrine[1] maintains that the canon is directly applicable only to schools that are dependent on the ecclesiastical authority. Otherwise, it would irremediably conflict with the law of governments that, on one hand, does not allow church intervention in public schools and, on the other hand, defends the free autonomy of those directing private schools from any pressure or coercion by outside entities.

Although this may be true in the realm of the facts, it should not be forgotten (see commentary on c. 804) that the competence—and therefore the right—which the Church invokes with respect to the teaching of Catholic religion is "ratione materiae," and not by virtue of the place of teaching. This right is therefore fully effective, both for Catholic or Christian schools and non-Catholic schools, public or private. When the Church's right to intervene is denied—as regards suitability with respect to faith or morals—in the appointment or removal of a teacher of Catholic

1. M. CONDORELLI, "Educazione, cultura e libertà nel nuovo 'Codex Iuris Canonici,'" in *Il Diritto Ecclesiastico* 1 (1983), p. 73; J.M. GONZÁLEZ DEL VALLE, commentary on c. 805, in *Pamplona Com.*

religion, "libertas Ecclesiae" is improperly limited, since the Church has the right to safeguard its own identity.

Thus the validity of the canon with respect to schools of any kind where the Catholic religion is taught should be affirmed. Further, c. 804 § 2 would be devoid of content if the right to take effective action with respect to appointing or removing said teachers were not recognized alongside this right to watch over the doctrinal and moral qualities of religion teachers. This right is incumbent upon the local ordinary for non-Catholic schools, also.

Another problem, which is not specifically canonical, is that of seeking satisfactory mechanisms so that the determination of suitability is accepted by the civil system and can have an influence on the type of labor contract made with religion teachers.

2. Intervention by the local ordinary with respect to teachers of Catholic religion is evident in his right to appoint or approve these teachers. When are teachers to be appointed and when are they only to be approved? A sector of doctrine[2] indicates one or the other, depending on whether the school is Catholic (appointment) or non-Catholic (approval); others[3] maintain that appointments are only to be made when the school is dependent on a diocesan juridic person. In all other cases, it is only incumbent upon the local ordinary to approve the appointments that are proposed to him. On the other hand, one author[4] believes that "the distinction made in c. 805 is grounded on the variety of juridical systems that exist with respect to schools because of the various governmental systems, leaving aside the Catholic or non-Catholic character of schools. Thus the bishop will proceed to appoint religion teachers directly in all cases where the internal statutes of educational institutions or the governmental laws regulating schools … assign appointment to a denominational authority. On the other hand, the bishop ... will proceed to give approval when other persons are appointed." The latter interpretation seems to be the more acceptable. In fact, even within the scope of the canonical juridical system, the various levels of links with the ecclesiastical authority that the various types of schools providing a Catholic education have do not in themselves entail or preclude, at any level, the requirement that religion teachers be appointed by the local ordinary. Such appointment proceeds if the educational authority agrees with the diocesan authority, but in other cases it will depend on the school's statutes. In any case, it is necessary to

2. D. COMPOSTA, commentary on cc. 804–805, in P.V. PINTO (Ed.), *Commento al codice di diritto canonico*, (Rome 1985); D. MOGAVERO, "L'insegnamento della religione nelle scuole secondo il codice di diritto canonico," in *L'annuncio cristiano nella società europea contemporanea* (Vatican City 1987), pp. 143–149.

3. J.M. GONZÁLEZ DEL VALLE, commentary on c. 805, in *Pamplona Com*; J.A. FUENTES, "La función de enseñar," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1992), p. 452.

4. G. DALLA TORRE, La questione scolastica nei rapporti tra Stato e Chiesa, 2nd ed. (Bologna 1989), pp. 43–44.

harmonize the diocesan bishop's right to regulate the general Catholic school system (c. 806 § 1) and religion teachers with school directors' right (which is also legitimate) to autonomy in directing their schools, which also extends to the approval of teachers of the various disciplines.

This is not a matter, however, of conflicting rights on the same matter that may be asserted by the individuals involved, since such an understanding is extraneous to the canonical system; rather, it is a matter of reciprocal service to the ecclesial "communio," depending on each person's functions and charisms.

3. Once the issues making it possible to determine whether appointment or approval is in order have been identified, it is necessary to determine the basis for assessing the suitability of teachers of the Catholic religion.

This matter does not lack for difficulties. The first problem arises from a comparison with c. 804 § 2. On one hand, religious or moral reasons are adduced for legitimately revoking suitability. On the other hand, the local ordinary's oversight extends to teachers' pedagogical aptitude, from which it follows that the ordinary can intervene in this respect.

So, should the wording used in the two canons be considered equivalent? There are those who reply in the affirmative, believing that a determination of pedagogical aptitude is included in the broad concept of "religious or moral considerations," since a serious lack of pedagogical aptitude would harm the "bonum religionis."[5] Although this is undoubtedly true, it would nevertheless seem necessary to distinguish two different levels of intervention by the ecclesiastical authority.

By virtue of divine law, it is incumbent upon the ecclesiastical authority to judge doctrine or morals, which is a matter over which the magisterium of the Church invokes—in authoritative instances of authenticity—exclusive competence that also constitutes a duty that cannot be waived. On the other hand, it seems that pedagogical aptitude, i.e., the ability to convey satisfactorily the knowledge one has in a teacher/student relationship, cannot be included within the scope of competence of the power of the magisterium. In fact, no mention is made of revealed truth. Rather, said aptitude constitutes a quality of the teacher that, precious as it is, has little to do with the orthodoxy of the faith and Catholic morals. Insofar as it is a human quality, it should be assessed by pedagogical experts.

Thus, at this first level, which is a level proper to the Church's magisterium, inseparably joined to the deposit of faith, one may not speak of the Church's right to judge the pedagogical qualities of the faithful who are dedicated to teaching. Rather, this judgment is up to educational authori-

5. G. FELICIANI, "L'insegnamento della religione cattolica nelle scuole pubbliche. Profili canonistici," in *Aggiornamenti sociali* 40 (1989), p. 365.

ties or a person authorized to issue teaching certificates. Intervention by the ecclesiastical authority with respect to the pedagogical aptitude of religion teachers is at this second level. Here the Church is not acting as an authentic interpreter of revealed truth, but rather as an educational authority on a par with any other non-Catholic educational authority or an institution that is competent to issue certificates to teach the Catholic religion. Certainly, if teaching the Catholic religion is considered an ecclesiastical office, the Church would be in a position similar to that of a public entity with respect to its own officials, with attendant juridical powers of the administrative type. If on the other hand (as would seem to be the case, and also to avoid unjustified discrimination between religion teachers and teachers of other subjects) it is maintained that a teacher has a juridical "status" that is identical to that of any other teacher (since they share the same professionalism, once they have been declared suitable to teach the Catholic religion under a certificate attesting to their pedagogical aptitude which is also done for the other disciplines), said teacher will be subject to ecclesiastical authority insofar as faith or morals are concerned and to school authorities (which might be one and the same authority) insofar as the professional content of his or her labor relationship is concerned.

4. On the other hand, the juridical status of an activity that has ecclesial relevance depends not only on its intrinsic characteristics, but also on numerous variable factors that may affect its juridical status (see commentary on c. 804). In the case of a teacher of a course in the Catholic religion, his function *per se* does not constitute an institutionally public activity of the hierarchy. However, certain historical circumstances, ecclesial as well as those related to the civil community and civil system, may confer upon his function a public dimension that should be prudently assessed by the legislator.

This means that the particular legislation in a territory or any agreements with governmental authorities may entail a juridical status for religion teachers that is similar to that held by holders of an ecclesiastical office, in which case not only matters of faith and morals, but also other aspects of such ecclesial "munus" would fall under Church authority.

Consequently, the picture we have portrayed of the juridic "status" of religion teachers may undergo considerable change so that determination not only of the orthodoxy of faith and the integrity of the teacher's Christian life, but also of his or her pedagogical qualities (which latter judgment would in itself be outside the ecclesiastical authority's competence except in cases where educational institutions are directly dependent on said authority) would be reserved for the ecclesiastical authority.

It is necessary, then, to respect the specific norms in effect in each nation on a case-by-case basis.

806 **§ 1. Episcopo dioecesano competit ius invigilandi et invisendi scholas catholicas in suo territorio sitas, eas etiam quae ab institutorum religiosorum sodalibus conditae sint aut dirigantur; eidem item competit praescripta edere quae ad generalem attinent ordinationem scholarum catholicarum: quae praescripta valent de scholis quoque quae ab iisdem sodalibus diriguntur, salva quidem eorundem quoad internum earum scholarum moderamen autonomia.**

§ 2. Curent scholarum catholicarum Moderatores, advigilante loci Ordinario, ut institutio quae in iisdem traditur pari saltem gradu ac in aliis scholis regionis, ratione scientifica sit praestans.

§ 1. The diocesan Bishop has the right to watch over and inspect the Catholic schools situated in his territory, even those established or directed by members of religious institutes. He has also the right to issue directives concerning the general regulation of Catholic schools; these directives apply also to schools conducted by members of a religious institute, although they retain their autonomy in the internal management of their schools.

§ 2. Those who are in charge of Catholic schools are to ensure, under the supervision of the local Ordinary, that the instruction given in them is, in its academic standards, at least as distinguished as that in other schools in the region.

SOURCES: § 1: c. 1382; SCSUS Litt. circ., 2 aug. 1939; SCR Resp., 26 ian. 1959; *CD* 35: 4; *ES* I, 39 §§ 1 et 2; *DPMB* 66
§ 2: SCSUS Normae, 28 iul. 1948,2°; PIUS pp. XII, Alloc. 13 sep. 1951

CROSS REFERENCES: c. 397 § 1

COMMENTARY

Davide Cito

1. The canon establishes the attributions of the diocesan bishop with respect to Catholic schools. The scope of application of this norm is limited to the schools indicated in c. 803 § 1. It does not extend to educational centers that are not Catholic schools in the technical canonical sense, even though they assert they impart a Catholic education.

The reason for this differentiated discipline should be sought in the different grade of involvement of the ecclesiastical hierarchy in the

apostolic activity of the faithful: Catholic schools are considered to be a public, official presence of the Church (cf. *GE* 8) and—as apostolic institutions—they receive a "mandate" from the hierarchy.[1] This is not the case with the other types of schools, which are manifestations of a personal initiative of the faithful (cf. cc. 211, 216). The faithful are the only ones responsible and thus do not compromise the name of the Church in their activity, even though the Church has an apostolic purpose.

By virtue of a link between Catholic schools and the hierarchy, the diocesan bishop has the right to issue directives concerning the general regulation of Catholic schools, as well as to watch over the preservation of their Catholic identity, and (as the last specification of this right of vigilance) to inspect the Catholic schools located in his territory.

The bishop's legislative power with respect to Catholic schools is grounded on the very nature of his pastoral office (c. 381 § 1). It cannot be renounced or delegated (c. 135 § 2). However, this does not preclude—indeed, it is advisable—that the bishop, in exercising this power, should act in communion with the other bishops in the bishops' conference so that apostolic activity will be more effective.[2] The scope of the diocesan bishop's legislative power extends to all the Catholic schools in his territory, regardless of the managing entity. At the same time, this power should be harmonized with the legitimate autonomy enjoyed by the school's promoters in matters having to do with its internal administration.

Although the canon only explicitly mentions the autonomy of schools directed by religious institutes, such mention should be considered to extend to any entity directing a Catholic school. The reason is the dual duty incumbent upon the diocesan bishop: the duty of issuing general legislation on Catholic schools—a duty set forth in this canon—and the duty to promote the diverse forms of the apostolate through coordination that respects the nature proper to each entity (c. 394 § 1). Also, in apostolic activity intimately linked to the hierarchy, as is the case of Catholic schools, different charisms exist that should be protected and encouraged, since they are the fruit of the action of the Holy Spirit.

The duty of vigilance to insure that the Catholic schools in his territory maintain and promote their own Catholic identity is also linked to the bishop's pastoral mission. Otherwise, not only would grave harm be caused to the Church, but the right of the faithful who attend these schools to obtain a Christian education (c. 217) would also be seriously violated.

The area in which this function is to be understood, in addition to the area set forth in § 2, encompasses everything that could reasonably cause harm to the Catholic character of the educational institution. This

1. Cf. SCCE, Instr. *L'école catholique*, March 19, 1977, no. 71; *AA* 24.
2. Cf. *DPMB*, no. 212 b.

then includes not only education and religious instruction, but also the guiding principles that inspire the school's environment, as well as the teachers' doctrinal and moral qualities (see commentary on cc. 803, 804, 805). In any case, the matter is subject to prudent assessment by the bishop.

A concrete manifestation of the duty of vigilance is the bishop's right to inspect Catholic schools. This is an act that can be delegated—since it falls within the executive power—and which is to be exercised in accordance with pastoral opportunity.

Canon 1382 of the *CIC*/1917 regulated the local ordinary's right to inspect all institutions dedicated to moral and religious education, and therefore not only schools, but also other educational and recreational centers. The discipline—which remains substantially the same—has now been divided among several canons (cc. 397, 683 § 1), and the canon we are now commenting on only has to do with schools.

2. In order to carry out its characteristic function (which is "institutionally ensuring a Christian presence in the world of culture and teaching"[3]), it is necessary that the Catholic school be outstanding for its scientific quality; otherwise, its ecclesial and social service would be irremediably compromised.

Since this is a matter of a professional activity that requires specific competence in the subject (see commentary on c. 796), the primary responsibility for achieving a satisfactory scientific, cultural and pedagogical level is incumbent upon the moderators of the schools themselves, not the parents or the ecclesiastical authority.

The ecclesiastical authority should respect and promote the professional competence of the faithful working in Catholic schools. The local ordinary's duty of vigilance with respect to the scientific quality of Catholic schools is not the same and is not exercised the same as his duty with respect to the teaching of religion. In fact, in the latter case, he acts by virtue of a divine mandate and with exclusive competence: education and religious teaching, wherever they are imparted, are in themselves subject to the ecclesiastical authority. On the other hand, with respect to the general scientific quality of the teaching imparted in a Catholic school, the local ordinary exercises a duty of vigilance by virtue of the Church's official involvement in such activity, i.e., she is acting as a sort of "higher school authority." It follows that this latter duty of vigilance is limited to schools that are Catholic only in a juridical sense, and also that the ecclesiastical authority will intervene *in a subsidiary way* in the event of nonfulfillment or negligence on the part of the school's moderators.

3. Cf. SCCE, Instr. *L'école catholique*, no. 62.

CAPUT II
De catholicis universitatibus aliisque studiorum superiorum institutis

CHAPTER II
Catholic Universities and Other Institutes of Higher Studies

807 **Ius est Ecclesiae erigendi et moderandi studiorum universitates, quae quidem ad altiorem hominum culturam et pleniorem personae humanae promotionem necnon ad ipsius Ecclesiae munus docendi implendum conferant.**

The Church has the right to establish and to govern universities, which serve to promote the deeper culture and fuller development of the human person, and to complement the Church's own teaching office.

SOURCES: c. 1375; *DSD* introductio; SCSUS Decl., 17 nov. 1959 (*AAS* 51 [1959] 920); *GE* 8, 10; PAULUS pp. VI, Alloc., 13 maii 1972 (*AAS* 64 [1972] 360–370); SCCE Let., 23 apr. 1973; *SapChr* prooemium, II, 1

CROSS REFERENCES: c. 800

COMMENTARY

Davide Cito

1. From a strictly juridical point of view, the Church's right to establish and govern universities is a concrete application of the generic right established in c. 800 with respect to schools, and the same considerations are applicable (see commentary on c. 800). However, its theoretical justification is more complex, since it more directly involves the delicate problematics of relations between faith and culture.

In fact, in the case of the schools which have a mainly educational function, formation of the person, the parents' natural right to educate

their children according to their religious convictions is posited as the basis of an effective educational pluralism. On the other had, universities, although they do not lack for a pedagogical purpose, are rather "academic communities which, in a rigorous and critical fashion, assist in the protection and advancement of human dignity and of a cultural heritage through research, teaching and various services offered to the local, national and international communities."[1] It would seem, then, that the intimate relationship between science and the university demands a freedom in research and teaching that can only with difficulty be reconciled with a particular religious confession. This would have a negative effect on the presumed objectivity and ideological neutrality of authentic scientific work.[2]

However, the mistake that is hidden behind this vision of science is clear. This mistake confuses two orders of reality as if they were on the same level: the religious and the scientific. In reality, not only do they not conflict with each other, but rather they reciprocally illuminate each other for a deeper understanding of reality.

Thus there is an urgent need for research centers whose privileged task is "to unite existentially by intellectual effort the two orders of reality that too frequently tend to be placed in opposition as though they were antithetical: the search for truth, and the certainty of already knowing the fount of truth,"[3]and that they be "completely dedicated to the research of all aspects of truth in their essential connection with the supreme Truth, who is God."[4]

This does not diminish, but rather reinforces and justifies ontologically the autonomy of earthly realities as taught by the Vatican Council II: "If by the autonomy of earthly affairs is meant the gradual discovery, exploitation, and ordering of the laws and values of matter and society, then the demand for autonomy is perfectly in order: it is at once the claim of modern man and the desire of the creator. By the very nature of creation, material being is endowed with its own stability, truth and excellence, its own order and laws. This man must respect as he recognizes the methods proper to every science and technique. Consequently, methodical research in all branches of knowledge, provided it is carried out in a truly scientific manner and does not override moral laws, can never conflict with the faith, because the things of the world and the things of faith derive from the same God" (*GS* 36; *Ex corde Ecclesiae*, 17).

1. *Magna Charta* of the european universities, Bologna, September 18, 1988, *Principi fondamentali*, cit. in JOHN PAUL II, Ap. Const. *Ex corde Ecclesiae*, August 15, 1990, in *AAS* 82 (1990), pp. 1475–1509, no. 12.
2. Cf. N. LUYTEN, "Actualité de l'Université catholique?," in *Seminarium* 26 (1974), pp. 742–761.
3. Ap. Const. *Ex corde Ecclesiae*, cit., no. 1.
4. Ibid., no. 4.

2. The profound harmony that exists between the natural order and the religious order, with their reciprocal autonomy, makes it possible, then, to distinguish between the direct action of the Church in proclaiming the Gospel and its indirect activity of infusing all human realities with the Christian spirit. At the same time, it implies an imperfect separation of both dimensions; otherwise, the evangelizing mission would be empty. In fact, on one hand, "the Gospel is intended for all peoples of every age and land and is not bound exclusively to any particular culture. It is valid for pervading all cultures so as to illumine them with the light of divine revelation" (*SapChr, Proemio*, I). On the other hand, "a division between faith and culture is more than a small impediment to evangelization, while a culture penetrated with the Christian spirit is an instrument that favors the spreading of the Good News" (ibid.).

The Church's action in a culture fully integrates these two orders of values. On the one hand, it respects the purpose proper to a university institution, namely, to contribute "to a deeper culture of humankind and a fuller development of the human person"; and at the same time, it attempts to penetrate it with the light of the Gospel, thus performing its evangelizing mission.

Similar to what happens with schools (see commentary on c. 800), and in conformance with c. 808, the Church's action with respect to founding and governing universities encompasses a broad range of possibilities, with respect to both the founders and the juridical-canonical form that diverse universities may take. In fact, the diverse modalities of the Church's apostolate described in *Apostolicam actuositatem* 24, are fully valid in the matter of universities.

3. The title of the chapter that begins with this canon expressly mentions "Catholic universities." This might lead one to erroneously think that it only has to do with Catholic universities in the technical sense of the term. However, there is no doubt—as can also be deduced from cc. 808 and 809—that the apostolic action of the people of God in the area of universities is not limited to activities officially linked with the institutional Church, but also encompasses initiatives personally undertaken by the faithful by virtue of their co-responsibility in the Church's mission.

Further, the profound connection that exists between the progress of culture and the effort to inform the temporal order with a Christian spirit emphasizes the particular responsibility of the lay faithful (harmoniously coordinated with the pastors' specific directions) in the area of university institutions: "It is the work of the entire Church to fashion individuals able to establish the proper scale of values in the temporal order and direct it toward God through Christ. Pastors have the duty to set forth clearly the principles concerning the purposes of creation and the use to be made of the world, and to provide moral and spiritual helps for the renewal of the temporal order in Christ.

"Laymen ought to take on themselves as their distinctive task this renewal of the temporal order. Guided by the light of the Gospel and the mind of the Church, prompted by Christian love, they should act in this domain in a direct way and in their own specific manner" (*AA* 7).

This harmonious complementarity of roles between pastors and the faithful becomes particularly necessary in an area like culture. In fact, the enormous current profusion of studies demands of persons working in the field of culture an increasingly greater professional competence supported by spiritual and doctrinal formation that enables them to orient all human realities to God (cf. cc. 225, 227, 229).

808 Nulla studiorum universitas, etsi reapse catholica, titulum seu nomen universitatis catholicae gerat, nisi de consensu competentis auctoritatis ecclesiasticae.

No university, even if it is in fact catholic, may bear the title 'catholic university' except by the consent of the competent ecclesiastical authority.

SOURCES: *AA* 24

CROSS REFERENCES: cc. 216, 803 § 3

COMMENTARY

Davide Cito

1. This canon repeats c. 803 § 3 almost verbatim, using the term "Catholic university" this time. There is no norm in the Code that parallels §§ 1 and 2 of c. 803, which treat the formal and material elements that canonically define the concept of a Catholic school. This lacuna has recently been resolved by the Apostolic Constitution *Ex corde Ecclesiae* which is a further development of Codal legislation (cf. art. 1 § 1).

2. On the basis of the current norms (cf. also the premises expounded in the commentary on c. 807), we can give a general picture of the various forms that may arise from an initiative of the Church—not only in the hierarchical sense, but also as a community of the faithful—as regards universities.

This picture is substantially analogous to the one we have already seen with respect to schools, although there are differences because of the peculiarities of universities. On the other hand, we should not forget that the possibility of particular legislation and the diversity of governmental legislation may significantly affect the specific juridical system of individual universities.

a) In the first place, the essential concept of "Catholic university" exists insofar as its material elements are concerned, and it is applicable to any university that gives its purpose as research and teaching in the light of the Gospel, regardless of its juridico-canonical status, which will be considered later. This essential concept has a preeminent position with respect to any other later determination (cf. cc. 1379 § 2 *CIC*/1917, 809 *CIC*).

The elements involved in this concept are given in the Apostolic Constitution *Ex corde Ecclesiae*, 13: "1) a Christian inspiration not only of individuals but of the university community as such; 2) a continuing

reflection in the light of the Catholic faith upon the growing treasury of human knowledge, to which it seeks to contribute by its own research; 3) fidelity to the Christian message as it comes to us through the Church; 4) an institutional commitment to the service of the people of God and of the human family in their pilgrimage to the transcendent goal which gives meaning to life."

The presence of these characteristics confers a Catholic identity upon a university and constitutes the indispensable prerequisite for its possible recognition as such.

b) In the second place, a formal technical criterion makes it possible to distinguish between "reapse catholicae" universities and universities that are Catholic in a juridico-canonical sense. Current legislation has modified earlier legislation in this area. Earlier legislation reserved the founding of Catholic universities or faculties to the apostolic See (cf. c. 1376 § 1 *CIC*/1917). Current legislation has adopted a discipline similar to that provided for schools.

Thus, according to *Ex corde Ecclesiae*, 3, Catholic universities founded or approved by the Holy See, a bishops' conference or some other assembly of the Catholic hierarchy or a diocesan bishop (§ 1) and those founded by a religious institute or some other public legal entity with a diocesan bishop's consent (§ 2) are to be considered Catholic "ipso iure."

c) Other entities, known generically as "ecclesiastical or laypersons," which confirms the diversity of potential founding entities, may establish a university that will be canonically considered "Catholic" by virtue of the consent given by a competent ecclesiastical authority and conditions that must be agreed upon by both parties (§ 3).

These conditions are mentioned in footnote 8 to *Ex corde Ecclesiae*, 3: "A university established or approved by the Holy See, by a bishops' conference or another Assembly of Catholic Hierarchy, or by a diocesan bishop is to incorporate these general norms and their local and regional applications into its governing documents, and conform its existing statutes both to the general norms and to their applications, and submit them for approval to the competent ecclesiastical Authority."

3. In any case, it should be pointed out that a Catholic university "participates in and contributes to the life and the mission of the universal Church, assuming consequently a special bond with the Holy See by reason of the service to unity which it is called to render to the whole Church" (*Ex corde Ecclesiae*, 27). This means that any conditions that may be set by lower authorities (a bishops' conference, a diocesan bishop) for the recognition of a Catholic university must always conform to those set by the apostolic See.

This link with the Holy See—set forth in the generic provision in *Pastor Bonus* 116 § 3, which reserves to the CCE "matters that are within

the competence of the Holy See"—in the absence of later clarifications, may be understood as a higher vigilance over all actions that are within the competence of the diocesan bishop or the bishops' conference, since, according to *Ex corde Ecclesiae*, 9, "The application of the Constitution is entrusted to the Congregation for Catholic Education, which has the duty to promulgate the necessary directives that will serve towards that end." To date, these directives have still not been published.

(For matters related to the title or name "Catholic university," Cf. commentary on c. 803).

4. Since a Catholic university, in a strict sense, provides a universal, constant public presence of Christian thought (cf. *GE* 10; *Ex corde Ecclesiae*, 9) and directly is committed to the name of the Church, it "is linked with the Church either by a formal, constitutive and statutory bond or by reason of an institutional commitment made by those responsible for it" (*Ex corde Ecclesiae*, 2 § 2).

In either case, there is a juridical link between a university institution and the ecclesiastical authority. This link, in turn, rests on the link set forth in c. 212 § 1 that binds all the faithful with the integrity of the deposit of faith and the duty to obey the pastors.

5. However, the Catholic universities' connection with the Church's hierarchy does not preclude the autonomy necessary to develop their own identity as research and teaching institutions and to carry out their own mission (cf. *Ex corde Ecclesiae*, 2 § 5). This implies that the ecclesiastical authority should respect and uphold statutory legislation and the specific competence of members of the academic community.

As can be seen in *Ex corde Ecclesiae*, 28 ("Even when they do not enter directly into the internal governance of the university, bishops should be seen not as external agents but as participants in the life of the Catholic university"), the proper function of the pastors is complementary to that of the academic community, with mutual respect for each other's roles. Academic authorities thus enjoy full freedom in managing and directing a university institution within the limits of universal and particular legislation. At the same time, however, since the actions of Catholic universities represent the Church to a certain extent, the ecclesiastical authority may legitimately intervene in both the promotion and the safeguarding of their Catholic identity (cf. c. 810 § 2; *Ex corde Ecclesiae*, 5 § 2) if the academic authorities have not properly done so. In fact, the academic authorities have the first responsibility to maintain and strengthen the institutions' Catholic identity (cf. *Ex corde Ecclesiae*, 4 § 1).

Further, the provisions on Catholic identity apply fully in the case of universities with a Catholic identity that are not "Catholic universities" by virtue of the fact that they are civil entities (otherwise, they would not be "reapse catholicae"); but the persons that are exclusively responsible for putting these provisions into faithful practice are the promoters and

directors of university institutions. The ecclesiastical authority may only intervene with the directors or issue an opinion in conformance with the Gospels if these universities are regulated only by civil legislation and not by the canonical order.

6. The vast range of possible juridical forms of substantially Catholic universities illustrates the great flexibility with which the Gospel message may suffuse cultural institutions, adapting fully to various historical circumstances or charisms of the faithful working in these institutions. Both diverse circumstances and charisms may suggest different solutions, provided the authenticity of the faith and Catholic morals are maintained.

809 **Episcoporum conferentiae curent ut habeantur, si fieri possit et expediat, studiorum universitates aut saltem facultates, in ipsarum territorio apte distributae, in quibus variae disciplinae, servata quidem earum scientifica autonomia, investigentur et tradantur doctrinae catholicae ratione habita.**

If it is possible and appropriate, Bishops' Conferences are to take care to have within their territories suitably located universities or at least faculties, in which the various disciplines, while retaining their own scientific autonomy, may be researched and taught in the light of Catholic doctrine.

SOURCES: c. 1379 § 2; *GE* 10; *SapChr* 25 § 3, 26

CROSS REFERENCES: c. 802

COMMENTARY

Davide Cito

1. This canon stresses the responsibility of the bishops' conferences, which is similar to that of diocesan bishops as presented in c. 802, with respect to the existence in the Conference's territory of universities or at least faculties with a Catholic identity. In *CIC*/1917 this duty fell to local ordinaries (c. 1379 § 2); however, the spirit of the norm was the same because the Catholic identity of the university was also privileged in respect to its legal status in the Pio-Benedictine legislation.

This assignment of responsibility to the bishops' conferences seems to be quite timely, insofar as the very physiognomy of the university is concerned (whose importance always transcends the local scope of the Church and confers upon it the status of an entity of national and international scope), as well as because it is in line with the conciliar teaching contained in *Gravissimum educationis* 10: "the sacred Synod earnestly recommends the establishment of Catholic universities and faculties strategically distributed throughout the world, but they should be noteworthy not so much for their numbers as for their high standards."

The high standards in secular and sacred science that a university should have to be able to achieve its cultural and evangelizing goals requires the availability of resources and qualified personnel that normally lie beyond the capabilities of a local church and thus require coordination on, at least, a national level.

2. This is a highly important aspect of the Church's evangelizing mission. That is why the pastors have a grave duty to take care to have universities "in which the various disciplines, may be researched and taught in the light of Catholic doctrine."

Of course to a certain degree the diverse religious, cultural and social conditions of each particular nation will affect the pastors' prudent assessment of the possibility and advisability of such centers. However, this should not eclipse the overarching importance of this aspect of the Church's mission.

3. Given the universal dimension of culture, universities, at least potentially, have an international character. Thus the direct responsibility of the bishops' conferences for Catholic universities in their territory demands, rather than precludes, timely collaboration at the international level among the various universities. This collaboration was vigorously encouraged by the Second Vatican Council (cf. *GE* 12) and subsequently affirmed by Apostolic Constitution *Ex corde Ecclesiae*, which recommends not only collaboration among Catholic universities (a specific example is the founding of the Federation of Catholic Universities promoted by Pius XII in 1949), but also among all cultural institutions:

"In order better to confront the complex problems facing modern society, and in order to strengthen the Catholic identity of the Institutions, regional, national and international cooperation is to be promoted in research, teaching, and other university activities among all Catholic Universities, including Ecclesiastical Universities and Faculties."

"Such cooperation is also to be promoted between Catholic universities and other universities, and with other research and educational institutions, both private and governmental" (*Ex corde Ecclesiae*, 1).

"Catholic universities will, when possible and in accord with Catholic principles and doctrine, cooperate with government programs and the programs of other national and international Organizations on behalf of justice, development and progress" (ibid., 7). Doing so "enables the Church to institute an incomparably fertile dialogue with people of every culture" (ibid., 6).

4. The pastors' duty set forth in this canon has a dual nature. First, it implies action that provides the faithful with spiritual formation so that they are increasingly aware of their "special obligation to permeate and perfect the temporal order of things with the spirit of the Gospel" (c. 225 § 2). Cultural commitment is no unimportant part of this responsibility. Second, they should offer the assistance necessary to sustain and promote the faithfuls' initiative in the university arena, assessing with pastoral prudence (considering the specific circumstances of each nation and Christian community) the most appropriate solutions, while taking care to harmonize two requirements: the liberty and the responsibility of the faithful who are dedicated to the university institution and the need to

ensure that the university's own Catholic identity is stable and lasting, not temporary (cf. *Ex corde Ecclesiae*, 4 § 4).

It is incumbent upon the pastors as teachers of the faith to judge whether a university is conducting research and teaching in accordance with Catholic doctrine. This is a particularly delicate task, since it requires recognizing the legitimate scientific autonomy of each discipline while at the same time singling out implications for revealed truth. It seems especially timely that the pastors should consult with competent faithful in the various branches of knowledge that could help them reach a mature judgment. This is an application of c. 228 § 2, which, however, is not limited to laity only, but extends to any of the faithful who have satisfactory qualifications.

810 **§ 1. Auctoritati iuxta statuta competenti officium est providendi ut in universitatibus catholicis nominentur docentes qui praeterquam idoneitate scientifica et paedagogica, doctrinae integritate et vitae probitate praestent utque, deficientibus his requisitis, servato modo procedendi in statutis definito, a munere removeantur.**

§ 2. Episcoporum conferentiae et Episcopi dioecesani, quorum interest, officium habent et ius invigilandi, ut in iisdem universitatibus principia doctrinae catholicae fideliter servantur.

§ 1. In Catholic universities it is the duty of the authority which is competent in accordance with the statutes to ensure the appointment of teachers who are suitable both in scientific and pedagogical expertise and in integrity of doctrine and uprightness of life, and if these qualities are lacking, to ensure that they are removed from office, in accordance with the procedure determined in the statutes.

§ 2. The Bishops' Conference and the diocesan Bishops concerned have the duty and the right of seeing to it that, in these universities, the principles of catholic doctrine are faithfully observed.

SOURCES: § 1: c. 1381 § 3; PIUS pp. XI, Ap. Const. *Deus scientiarum Dominus*, 24 maii 1931, 21, 22 (*AAS* 23 [1931] 251)
§ 2: cc. 1381 § 1, 2317; *DPMB* 68; SCCE Let., 23 apr. 1973

CROSS REFERENCES: c. 803 § 2

COMMENTARY

Davide Cito

1. It is true "everyone in the academic community helps in promoting unity, and each one, according to his or her role and capacity, contributes towards decisions which affect the community, and also towards maintaining and strengthening the distinctive Catholic character of the institution" (Ap. Const. *Ex corde Ecclesiae*, 21). However, the make up of the university as a research and teaching center confers a particular importance upon the person of the teacher (cf. ibid., 4 § 1), insofar as the achievement of its purposes and faithfulness to its institutional identity are concerned.

This canon briefly discusses the various elements that—from the material and procedural point of view—regulate the juridico-canonical relationship between a teacher and a Catholic university. These elements have been developed recently in the Apostolic Constitution *Ex Corde Ecclesiae*. The crux of the matter is the fruitful and appropriate placement of the teacher in the academic community. This placement determines the requirements that are demanded of teachers.

In general, they are substantially identical to those that are required of teachers in Catholic schools (cf. commentary on c. 803). However, the high scientific quality that a university should have has led the legislator to explicitly emphasize this matter in the instance of teachers, whereas insofar as schools are concerned, this question may only be clarified by studying cc. 803 § 2 and 806 § 2.

2. This canon speaks of two qualities of university professors: one related to scientific and pedagogical expertise and the other related to doctrinal integrity and uprightness of life.

a) Insofar as the first requirement is concerned, academic authorities should verify the professional competence of persons appointed to teach at a university. This is a requirement of no little importance, since it greatly affects the institution's academic prestige and thus its capacity to evangelize. This requirement should be regulated in greater detail in the statutes, in accordance with national legislation. It should be stressed in any case that academic authorities, including cases in which academic authorities are also ecclesiastical authorities, act in this area *as university authorities*—and thus in accordance with the highest professional requirements—and not by virtue of sacred power.

In cases in which academic authorities and ecclesiastical authorities are not the same persons, it is the academic authorities that are competent to judge the professors' scientific and pedagogical qualifications.

b) Insofar as doctrinal and moral requirements are concerned (cf. commentary on c. 803), there are different disciplines, depending on whether a professor is a Catholic or a member of another denomination, a situation which is discussed often in Apostolic Constitution *Ex corde Ecclesiae*, 22; 4 §§ 2–4. In fact, Catholic professors "are called to be witnesses and educators of authentic Christian life" (22); they have the responsibility to further the institution's Catholic identity (4 § 2); and they "are to faithfully accept Catholic doctrine and morals in their research and teaching (4 § 3). On the other hand, in the case of non-Catholic professors, "All teachers are to be inspired by academic ideals and by the principles of an authentically human life" (22); they "are to respect the Catholic identity of the Institution" (4 § 2); this respectful attitude must be manifest in their research and teaching (4 § 3); and once again, they "are to recognize and respect the distinctive Catholic identity of the university" (4 § 4). In order not to harm the Catholic identity of the university, it is recommended that

"the number of non-Catholic teachers should not be allowed to constitute a majority within the Institution, which is and must remain Catholic" (4 § 4). This is not just a matter of numbers, which vary in accordance with the specific religious circumstances in the university's context, but rather it is a matter of a prudent assessment that should be made to serve the evangelizing mission which the institution is called to carry out.

3. Failure to meet professional requirements or violation of contractual obligations may also be grounds for interrupting a labor relationship, depending on state law for similar universities (public or private) that do not have a religious orientation. This is therefore a problematical area which lies outside the ambit of juridico-canonical consideration. The case of failure which is regulated by this canon, whether initially or during a labor relationship, to meet the doctrinal and moral requirements demanded of a teacher at a Catholic university is quite different. In this case also, the search for satisfactory ways to make the religious and moral requirements demanded of professors at Catholic universities part of labor contracts and thus relevant too for the civil system lies outside a strictly canonical purview.

From the intra-ecclesial point of view, it is a matter of determining how academic and ecclesiastical authorities—each in their areas of competence—participate in appointing or dismissing a teacher from a Catholic university on religious or moral grounds. The canon only states that "teachers who are suitable both in scientific and pedagogical expertise and in integrity of doctrine and uprightness of life, ... if these qualities are lacking, to ensure that they are removed from office, in accordance with the procedure determined in the statutes." It also points out that this duty is to be exercised by a "competent authority." Although academic authorities are competent to assess scientific qualifications (regardless of whether the academic and ecclesiastical authorities are the same persons), in this second case, both the academic and the ecclesiastical authorities, each in different areas, must be considered competent.

In fact, both cooperate to further and defend the Catholic identity of the center: "The responsibility for maintaining and strengthening the Catholic identity of the university rests primarily with the university itself. This responsibility is entrusted primarily to university authorities" (*Ex corde Ecclesiae*, 4 § 1). At the same time, "Each Bishop has a responsibility to promote the welfare of the Catholic universities in his diocese and has the right and duty to watch over the preservation and strengthening of their Catholic character" (ibid., 5 § 2; § 2 of the canon is along this same line).

In the case of requirements of a religious nature, "ratione materiae" competence is reserved to ecclesiastical authorities. In fact, ecclesiastical authorities, by virtue of their magisterial power, are the only ones competent to judge conformity with a doctrine or conformity of behavior with natural law or the Catholic faith and render an opinion on a

teacher's moral or religious suitability for the purposes of his appointment or removal.

The institutional connection between a university and ecclesiastical authorities that may be established at the statutory level, by approval or otherwise (cf. *Ex corde Ecclesiae,* 5 § 2 and note 52), should allow an ecclesiastical authority's opinion on a teacher's moral or religious suitability to be decisive insofar as an appointment or removal from office is concerned.

The statutory norm may provide different procedures, normally by academic authorities, to enforce the pastors' opinion. In any case, academic authorities have the duty to further the Catholic identity of the institution (cf. *Ex corde Ecclesiae,* 4 § 1), and facilitating the enforcement of ecclesiastical authorities' opinion is not exactly a secondary part of this duty.

Further, moral and religious requirements constitute an essential part of the juridical relationship between teachers and universities, to the extent that "All teachers and all administrators, at the time of their appointment, are to be informed about the Catholic identity of the Institution and its implications, and about their responsibility to promote, or at least to respect, that identity" (*Ex corde Ecclesiae,* 4 § 2). Consequently, nothing prevents the statutes from stipulating specific personal, family or social situations that would prevent appointment or be grounds for removal from office for incompatibility with the obligations entailed in teaching at a Catholic university.

These cases do not require a magisterial judgment: it is only a matter of verifying a fact that has already been declared by the ecclesiastical authority as contrary to natural law or the Catholic faith. Consequently, academic authorities may autonomously proceed to deny suitability for office or to interrupt a labor relationship with no need for further consultation with the pastors.

The qualifications for professors at a Catholic university are substantially applicable to persons teaching a sacred science, although the peculiarities of these disciplines clearly affect professors' juridical status (cf. commentary on c. 812).

4. University authorities have a primary responsibility to further the institution's Catholic identity in all areas, which are obviously not limited to research and teaching. Moreover, the pastors have a right/duty to see that "in these universities, the principles of Catholic doctrine are faithfully observed" (§ 2).

This is a duty that cannot be refused, since it belongs to their specific "munus" (c. 386 § 2). It requires pastors to exercise oversight by intervening in a timely way, respecting and encouraging legitimate charisms, when situations harmful to the integrity of the faith occur.

In exercising this oversight, pastors should proceed in harmonious collaboration with university authorities in accordance with the general principles contained in Apostolic Constitution *Ex corde Ecclesiae*: "If problems should arise concerning this essential requisite [i.e. the Catholic identity of the university], the local bishop is to take the initiatives necessary to resolve the matter, working with the competent university authorities in accordance with established procedures and, if necessary, with the help of the Holy See" (5 § 2).

811 **§ 1. Curet auctoritas ecclesiastica competens ut in universitatibus catholicis erigatur facultas aut institutum aut saltem cathedra theologiae, in qua lectiones laicis quoque studentibus tradantur.**

§ 2. In singulis universitatibus catholicis lectiones habeantur, inquibus eae praecipue tractentur quaestiones theologicae, quae cum disciplinis earundem facultatum sunt conexae.

§ 1. The competent ecclesiastical authority is to ensure that in catholic universities there is established a faculty or an institute or at least a chair of theology, in which lectures are given to lay students also.

§ 2. In every catholic university there are to be lectures which principally treat of those theological questions connected with the studies of each faculty.

SOURCES: § 1: *GE* 10
§ 2: *GE* 10; *GS* 62

CROSS REFERENCES: c. 229

COMMENTARY

Davide Cito

1. This canon directly echoes a conciliar recommendation which is contained in *Gravissimum educationis* 10, and is prescriptively reaffirmed by Apostolic Constitution *Ex corde Ecclesiae*, 19, which explains the reasons that necessitate the teaching of theology as an essential element for the status of a Catholic university: "Theology plays a particularly important role in the search for a synthesis of knowledge as well as in the dialogue between faith and reason. It serves all other disciplines in their search for meaning, not only by helping them to investigate how their discoveries will affect individuals and society but also by bringing a perspective and an orientation not contained within the methodologies of these disciplines ... Because of its specific importance among the academic disciplines, every Catholic university should have a faculty, or at least a chair, of theology."

Although the canon's recommendation is limited to Catholic universities, the sense of the norm indicates that it is desirable for all universities with a Christian inspiration.

Since this has to do with teaching Catholic theology, which is intrinsically linked to the deposit of Revelation, it is bound to ecclesiastical authority. This is a dual link. First, there is a link grounded on divine law, which qualifies the pastors to judge the conformance or non-conformance of this teaching with the doctrine of the faith. This competence is exclusive and can be exercised at all times. Second, there is a link between the juridico-canonical system of the teaching of Catholic theology and the Church's power to regulate it in accordance with prudent and pastoral criteria, in the light of the ecclesial circumstances in which this teaching takes place.

Thus, in current legislation, a faculty, institute or chair of Catholic Theology is recognized as such in the canonical system only if it has been founded or approved by the competent ecclesiastical authority.

It is necessary to distinguish between these two aspects, since they are not identical. The reason is that theological science *per se* is not one of the activities that intrinsically constitute part of the ministry of the word of God and thus is not in the official public domain of this ministry; rather, it has the same nature as the other academic disciplines.

Although its unbreakable link with Revelation essentially equates its contents with the pastors' magisterium, understood as an authoritative instance of divine law that was given to ensure the authenticity of the deposit of faith, the same cannot be said of the concrete regulations of the ways of exercising it. These may vary, depending on changeable ecclesial circumstances or the kind of relationships between the Church and the political community, and these may make this teaching more or less public, which has consequences for the teachers' status that cannot be ignored (cf. c. 812).

2. This canon provides that a theological faculty, institute or at least a chair be founded. The "competent ecclesiastical authority" in this case is the authority competent to found or approve a university or higher institute: the Holy See, a bishops' conference or a diocesan bishop. According to *Ex corde Ecclesiae*, 3 § 2, a religious institute or some other public juridical person may do so, with the diocesan bishop's approval.

However, in the case of a faculty of Theology, its founding or approval is reserved to the CCE (cf. *SapChr* 5; *PB* 116 § 2), and its juridical system is established by *SapChr*, as is the case for a faculty belonging to a non-ecclesiastical Catholic university (cf. *Ex corde Ecclesiae*, 1 § 2).

3. In speaking of theology classes at a Catholic university, *Gravissimum educationis* 10 indicated that adapted ("accomodatae") lessons were to be taught to lay students, also. The canon omits the word "adapted," limiting itself to affirming that lectures are to be given to lay students also. The wording of *Gravissimum educationis* 10 does not mean by any means that there is a "theology for the laity" of a lower quality than the "theology for priests and religious." In this regard, the deletion

of the word "accomodatae," which could lead to this erroneous idea, should be taken positively. However, in order to understand fully the wording used in the canon, three aspects involved in the wording of the Code should be taken into account.

a) First, one should not think there are two types of theology; instead, there is a single scientific discipline which, if it desires to take its legitimate place alongside the other sciences taught at universities—as *Ex corde Ecclesiae*, 19 states—it must be of university-level scientific quality.

b) Further, in spite of the explicit conciliar statement to the effect that "it is to be hoped that more of the laity will receive adequate theological formation and that some among them will dedicate themselves professionally to these studies and contribute to their advancement" (*GS* 62), the conviction—because of an undeniable and to a certain extent understandable historical tradition—is still widely held that these courses are reserved for the sacred ministers and religious, and that the laity dedicate themselves occasionally and at a lower-quality level. On the contrary, this canon, in accordance with cc. 217, 227 and 229, affirms not only an occasional possibility, but the right—and moral duty—of the lay faithful to have a religious formation that is suitable to their personal status, in this case, university students.

c) Third, there is no doubt that adaptations should be made to the students' particular circumstances, as is the case in any other discipline. In this regard, lay students generally do not have the same prior doctrinal formation as sacred ministers or religious, but this should not adversely affect the quality of authentic university-level quality of teaching. Otherwise, it would be difficult to prevent theology from being relegated to a marginal status with respect to the other disciplines, not to mention the fact that the possibility of serious doctrinal formation for lay students would be threatened.

4. "Let the faithful ... incorporate the findings of new sciences and teachings and the understanding of the most recent discoveries with Christian morality and thought, so that their practice of religion and their moral behavior may keep abreast of their acquaintance with science and in the relentless progress of technology: in this way they will succeed in evaluating and interpreting everything with an authentically Christian sense of values" (*GS* 62). The need for religious formation to illuminate everyone's scientific knowledge demands theological reflection that is related to the disciplines taught at the university.

This constitutes an important part of the research effort of the theological faculty or chair and should take form in the respective course offerings for students, where they can discuss the doctrinal and ethical implications of the secular sciences they are studying.

The circumstances of each university center may suggest more suitable concrete ways of doing so, and the wording of the canon is therefore

quite flexible. In any case, the grave duty of academic and ecclesiastical authorities to provide for such an important aspect for the identity of a Catholic university should not be forgotten. This matter directly affects not only its identity as a research and teaching center, but also the students' right to receive teaching and formation that combine scientific knowledge with reflection arising from the faith: "The education of students is to combine academic and professional development with formation in moral and religious principles and the social teachings of the Church; the program of studies for each of the various professions is to include an appropriate ethical formation in that profession. Courses in Catholic doctrine are to be made available to all students (*Ex corde Ecclesiae*, 4 § 5).

812 **Qui in studiorum superiorum institutis quibuslibet disciplinas tradunt theologicas, auctoritatis ecclesiasticae competentis mandatum habeant oportet.**

Those who teach theological subjects in any institute of higher studies must have a mandate from the competent ecclesiastical authority.

SOURCES: *SapChr* 27 § 1

CROSS REFERENCES: —

COMMENTARY

Davide Cito

1. This is one of the canons that was most worked over during the process of the reform of the Code. It was the occasion for a heated debate that has not been calmed by post-Codal legislation, since no satisfactory interpretation of the current norm has been reached.

The crux of the interpreters' work is an exact definition of the concept of *mandate*, which is a basic requirement in order to be able to hold a position as professor of theological courses at any Catholic institute of higher studies. There is also the issue—depending on the basic discussion—of the extent to which the mandate determines the juridical status of the professor and his activity.

2. Precisely because of the phrasing difficulties and the hermeneutic value of the reasons that led to the current wording, it seems to be timely to review briefly the principal steps that were taken to arrive at the current provision.

CIC/1917 did not contain any canon comparable to the current canon. It was limited to establishing in c. 1381 § 3 that local ordinaries have the right to approve professors and religion textbooks for schools of all levels and to demand their removal for religious or moral reasons.

In 1931, *Deus scientiarum Dominus*, 21, 5° introduced into the Church's universal legislation a "missio canonica" requirement in addition to relevant academic degrees. This "missio" is required for the legitimate admission of a professor at a university or faculty of ecclesiastical studies. It is granted by the Chancellor after a "nihil obstat" is obtained from the Holy See.

In 1979, *SapChr*, which reformed all the norms on ecclesiastical studies, created the technical term "ecclesiastical universities and

faculties" as a particular type within Catholic universities, prescribing the following for them: "§ 1. Those who teach disciplines concerning faith or morals must receive, after making their profession of faith, a canonical mission from the Chancellor or his delegate for they do not teach on their own authority but by virtue of the mission they have received from the Church. The other teachers must receive permission to teach from the Chancellor or his delegate.

"§ 2. All teachers, before they are given a permanent post or before they are promoted to the highest category of teacher, or else in both cases, as the Statutes are to state, must receive a *nihil obstat* from the Holy See" (27 §§ 1–2).

Canon 64 in chapter II (which regulated institutes of higher studies) of the first *schema* of Codal reform on the Church's teaching function (1977) read as follows: "Qui in studiorum superiorum Institutis quibuslibet lectiones tradunt theologicas aut cum theologia conexas, missione egent canonica." In spite of the first few versions, which supported modified wording eliminating the canonical mission requirement, the canon remained unchanged in the next *schema*, which appeared in 1980 (c. 767). Thus, the requirement for a canonical mission was not limited to teaching the sacred sciences at an *ecclesiastical* university or faculty (as was required by *SapChr*, which appeared in the interim), but also extended to all professors teaching theological courses at any Catholic institute of higher studies.

The 1981 *Relatio* again suggested a modified wording deleting the "missio canonica" requirement: "Exigentia 'missionis canonicae' in discrimen grave ponere potest Institutiones universitarias, praesertim in relationibus cum Gubernio. Omittatur proinde canon (Aliquis Pater).

"Eodem sensu alter Pater, qui censet canonem aliquo modo superfluum esse, nam sufficienter providetur per cann. 765 et 766. Eius applicatio insuper requireret magnam structuram administrativam. Quod magni interest est ut in tuto ponatur ius vigilantiae competentis auctoritatis."[1]

The suggestion was partially accepted: the word "mandatum" replaced "missio canonica," and the reference to courses "cum theologia conexas" was deleted. No further changes in the wording were made subsequently. The following reason was given for these changes: "opportunius visum est sermonem instituere de mandato, quam de missione canonica quae in hoc casu non plene aequaretur cum vera canonica missione. Ceterum principium heic statuendum est quod qui theologiam docet mandato eget competentis auctoritatis ecclesiasticae."[2]

Post-Codal legislation taking up this subject has not only reaffirmed the norm given in c. 812, but also added later provisions. Thus in addition

1. *Comm.* 15 (1983), pp. 104–105.
2. Ibid., p. 105.

to the profession of faith required in c. 833, 7° ("The following are bound to make a profession of faith personally: those who in any universities teach subjects which deal with faith or morals, at the beginning of their term of office: ... 7°."), these professors also have to take an oath of fidelity. The note stating this obligation reads, "The faithful who are called to hold an office on behalf of the Church are obligated to make a 'profession of faith' in the manner approved by the Apostolic See (cf. c. 833). Moreover, the obligation to take a special 'oath of fidelity' with respect to the duties inherent in the office taken was extended to the categories mentioned in c. 833, nos. 5–8. Earlier, this oath had only been required for Bishops."[3]

In order to complete the picture of the current norm, we should also mention the Instruction *Donum veritatis*[4] on the ecclesial vocation of theologians, no. 22 of which reads: "collaboration between the theologian and the magisterium takes place in a special way when the theologian receives the canonical mission or teaching mandate. This collaboration, in a certain sense, then becomes participation in the task of the Magisterium, to which he remains bound under a juridical link. The deontological rules which automatically ensue, with evidence of service to the word of God, are corroborated by the commitment a theologian makes upon accepting his office, making the profession of faith and taking the oath of fidelity.

"As of this moment the theologian is officially invested with the task of presenting and illustrating the doctrine of the faith in all exactitude and in its entirety."

Finally, The Constitution *Ex corde Ecclesiae*, 4 § 3, says: "In particular, Catholic theologians, aware that they fulfil a mandate received from the Church, are to be faithful to the Magisterium of the Church as the authentic interpreter of Sacred Scripture and Sacred Tradition."

3. Based on the information given up to this point, the interpreters' work has focused on the various problems arising from their analyses.

a) First, the scope of the disciplines must be defined for which teachers are required to have a mandate or mission granted by an ecclesiastical authority. To these ends, *CIC* uses three terms interchangeably: "theological discipline" (c. 812); "sacred science" (c. 229 § 3); and "matters relating to faith or morals" (c. 833, 7°); *SapChr* 27 § 1 uses this last term, whereas the Instruction *Donum veritatis* (no. 22) and the Apostolic Constitution *Ex corde Ecclesiae* (no. 4 § 3) refer to "theologians."

Without going into subtle dissertations on the equivalence or lack of equivalence of the terms used,—which would miss the meaning of these

3. CDF, *Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo*, in *AAS* 81 (1989), p. 104.

4. CDF, Instr. *Donum Veritatis*, May 24, 1990, in *AAS* 82 (1990), pp. 1550–1570.

provisions—it is possible to agree with Errázuriz[5] in that the concepts are substantially identical. The term "theological discipline" is not limited to theology[6] nor does it claim to prejudice the academic autonomy of sacred sciences other than theology. Instead, it means, perhaps not very precisely, all disciplines that are to be studied and taught in the light of the faith by virtue of the fact that their transmission is more or less directly related intrinsically to the transmission of the Word. In this sense, deletion of the reference to the sciences "cum theologia conexas" found in the 1977 and 1980 *schemata* should be taken positively, since it was not made clear that the characteristic that identifies a sacred discipline is the word of God, not a connection with theology.

b) Once the material domain of application of the norm has been defined, i.e., teaching of the sacred sciences, the doctrinal problem that still remains is the scope and contents of the term "mandate" as used in the canon.

In reality, the matter involves another question that must be addressed first and which we could explain schematically as follows: *SapChr* 27 § 1 speaks of a "canonical mission" and has to do with teaching sacred sciences at ecclesiastical universities; on the other hand, the canon we are commenting on here uses the term "mandate" for both Catholic and ecclesiastical universities (cf. the reference made in c. 818); we have already seen that the fact that the two entities were not exactly the same was given during work on the reform of the Code as the justifying reason for changing the wording. Furthermore, the Instruction *Donum veritatis* (no. 22) speaks of a "mandate or canonical mission," whereas the Apostolic Constitution *Ex corde Ecclesiae* (art. 4 § 3), which is directed at Catholic universities alone, just mentions the mandate.

The question is, then, do a mandate and a canonical mission, even though they are not exactly the same thing, have the same effect? Or on the other hand, is there a different discipline, i.e., a "mandate" for Catholic universities and a "missio canonica" for ecclesiastical universities? Or has the canonical mission of *SapChr* been superseded by the "mandate" of c. 812?

Doctrine is divided on this preliminary problem. Dalla Torre[7] and Alessandro[8] lean toward substantial similarity of the two institutes. On the

5. C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), p. 223.

6. For an opposing arguement J.L. ILLANES, *Teología y Facultades de teología* (Pamplona 1991), pp. 340–341.

7. G. DALLA TORRE, "La collaborazione dei laici alle funzioni sacerdotale, profetica e regale dei ministri sacri," in *Monitor Ecclesiasticus*, 109 (1984), p. 151.

8. J. ALESSANDRO, "The Rights and Responsibilities of Theologians: A Canonical Perspective," in CANON LAW SOCIETY OF AMERICA–CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, *Cooperation Between Theologians and the Ecclesiastical Magisterium*, L.J. O'DONOVAN (Ed.) (Washington D.C. 1982), pp. 106–109.

other hand, Urrutia[9] and Illanes[10] state that there is a different discipline and they believe the *SapChr* prevails over the *CIC* for ecclesiastical universities. Manzanares,[11] Montan[12] and Errázuriz[13] believe the *CIC* (which requires a mandate for both) prevails.

4. On the issue of the effects of a mandate or canonical mission on the work of a professor and his juridical status, doctrinal opinions proliferate, although at times they differ only in minor ways. These opinions differ principally on two matters: the type of link between a professor and the institutional dimension of the Church, and the level of the "official nature" of his teaching.

Within the limits of a commentary, and with no pretense of giving an exhaustive answer to all the problems arising over the interpretation of this canon and applicable extra-codicial norms, it seems necessary to me to distinguish among the diverse levels on which the legislator's provisions operate. These provisions cannot be put on the same level.

Insofar as theological work is concerned, its purpose is to "acquire, in harmony with the Magisterium, an ever deeper understanding of the word of God" (Instr. *Donum veritatis*, 6). It has increasingly become authentic scientific knowledge (cf. ibid., 7); it is "rational knowledge whose object is given by Revelation, transmitted and interpreted in the Church under the authority of the Magisterium, and accepted by faith" (ibid., 12). It thus has an epistemological status that places it among the other academic disciplines, although its intrinsic link with the divine Word entails the need to develop it in the Church and in communion with the Church through the authoritative instance of the interpretation of the Revelation, which is the Magisterium. This does not imply a limit on research, but on the contrary, makes it possible, since there can be no true theology outside divine truth.

Insofar as rational knowledge is concerned, theological advances and authority depend on the persuasive force of the arguments, regardless of the ecclesial status of the person espousing them. In this sense, there cannot be an "official" theology opposing a "private" theology, just as this would be inconceivable in any other field, sacred or secular. It follows that granting a mandate or mission to a theologian does not alter the substance of his academic work nor does it confer upon him any a priori official status, since there is no such thing.

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9. F.J. URRUTIA, "Ecclesiastical Universities and Faculties (Canons 815–821)," in *Studia canonica*, 23 (1989), pp. 467–468.

10. J.L. ILLANES, *Teología y Facultades de teología*, cit., pp. 340–341.

11. J. MANZANARES, "Las universidades y facultades eclesiásticas en la nueva codificación canónica," in *Seminarium*, 23 (1983), p. 588.

12. A. MONTAN, "La funzione di insegnare della Chiesa," in *La normativa del nuovo Codice*, 2nd ed. (Brescia 1985), p. 168.

13. C.J. ERRÁZURIZ, *Il "munus docendi Ecclesiae"...*, cit., p. 226.

On the other hand, the hypothesis that the magisterium makes proper academic conclusions made by a given author is a different matter. In this case, such conclusions would be declared part of the patrimony of the faith to the extent that the authority of the magisterium recognizes them. This authority cannot be arbitrary, but rather depends on its objective connection with revealed truth.

The link that connects a teacher of sacred disciplines with the magisterium implies in itself certain quite precise juridical elements, in part already formalized in the *CIC* (cc. 209, 212, 218, 229) and in part inherent in the concrete ecclesial service rendered by virtue of his scientific work.

The efficacy of a mandate or canonical mission lies precisely in the fact that it reinforces and makes these juridical elements official when theological work is done in centers carrying out a public ecclesial service.

5. The existence of such centers, which at the current time are Catholic and ecclesiastical universities (since seminaries, by contrast, are structures proper for the ecclesiastical organization that are intended solely for the formation of its ministers), arose in response to both reasons of a permanent nature and specifically historical reasons and to this extent are susceptible to change, even major change.[14] The great influence that institutions of higher learning have always had on civil and religious society is constant. It is an influence that justifies the Church's centuries-old effort to further and support the broadest possible spread of these institutions.

On the other hand, the religious, cultural and political circumstances that influence the conditions of an effective Christian presence in university environments are historically variable. These circumstances determine the adoption of the juridical instruments thought to be most suitable for safeguarding the integrity of the faith and at the same time encourage the development of research and teaching in the light of the faith.

The fact that these centers perform a public ecclesial service does not change their substantive make up. This only means that their institutional commitment to further Christian culture in society is juridically manifested by a formal link with the Church's Hierarchy and implies that those who work in them, and the ecclesiastical authority also, have particular responsibility for maintaining and reinforcing the institution's Catholic identity.

From this it follows that a mandate or canonical mission does not alter the nature of the theological work or the university make up of those dedicated to such work, but rather they formalize and officially reinforce the juridical element between the faithful teaching sacred sciences and the ecclesiastical authority. In addition, the increasing movement of

14. Cf. J. HERVADA, *Elementi di diritto costituzionale canonico* (Milan 1990), pp. 166–168.

Catholic and ecclesiastical universities into the public domain of the Church's activities (a movement that is possible, since it is ultimately dependent on the prudent judgment of the pastors) causes the relationship between the ecclesiastical authority and the theologian to take on a marked public character. The mandate and the "missio" (which seem to express substantially the same concept) are an evident manifestation of this phenomenon.

6. This is not to misconstrue the contents of theological work, which is identical wherever it is done, or deny the juridical position of the faithful with respect to the sacred disciplines, the study and transmission of which are not reserved to particular categories of the faithful, nor is special authorization required: this is open to everyone (c. 229 § 2). It only means that in order to teach the sacred sciences at Catholic or ecclesiastical universities, professional preparation and the uprightness of the professor's life—which, to be sure, are presumed requirements—are not sufficient. An administrative act of appointment to office by the ecclesiastical authority is also required. This act formalizes the deontological obligations involved in this office and thus makes them more efficacious in the law of the country as well.

813 **Episcopus dioecesanus impensam habeat curam pastoralem studentium, etiam per paroeciae erectione, vel saltem per sacerdotes ad hoc stabiliter deputatos, et provideat ut apud universitates, etiam catholicas, centra habeantur universitaria catholica, quae iuventuti adiutorio sint, praesertim spirituali.**

The diocesan Bishop is to be zealous in his pastoral care of students, even by the creation of a special parish, or at least by appointing priests with a stable assignment to this care. In all universities, even in those which are not catholic, the diocesan Bishop is to provide catholic university centres, to be of assistance to the young people, especially in spiritual matters.

SOURCES: *GE* 10; *AG* 38; *DPMB* 68; SCCE Litt. circ., iun. 1976

CROSS REFERENCES: c. 383

COMMENTARY

Davide Cito

1. "University pastoral care is that activity of the University which offers the members of the university community an opportunity to integrate religious and moral principles with their academic study and non-academic activities, *thus integrating faith with life.* It is part of the mission of the Church within the University, and is also a constitutive element of a Catholic University itself, both in its structure and in its life" (Ap. Const. *Ex corde Ecclesiae*, 38).

The great importance of this area of the apostolate, which is intimately connected with the future of society and of the Church itself (cf. *GE* 10), as well as the similar nature shared by a university institution (in the sense of an educational community) and the effort to bring authentic Christian life to maturity and further the comprehensive formation of a human individual (c. 795), underlie this prescription of the Code.

This canon indicates the diocesan bishop's general responsibility for university students (cf. *Ex corde Ecclesiae*, 41, note 35), which is a part of his pastoral care as described comprehensively in c. 383.

This responsibility is in harmony with the responsibility of others that are involved in various capacities with apostolic work among university students (cf. *Ex corde Ecclesiae*, 4, 1), according to principles governing the Church's apostolic activities: a co-responsibility of all members of the people of God (cc. 211, 216); the free exercise of one's own charisms

(c. 214); the bishop's duty to encourage and support the various forms of the apostolate, while respecting and safeguarding ecclesial "communion" (c. 394).

These principles are particularly valid in the area of university pastoral care, where the apostolic activities of the faithful clearly have a special initiative and efficacy.

2. The canon, in order the provide proper spiritual assistance for students, mentions the possibility of establishing a university parish in accordance with c. 528, a chaplaincy (c. 564) where priests with a stable assignment can devote themselves to the spiritual assistance of students, or centers offering formation help.

In the case of a Catholic university, whether it is Catholic in a formal sense or in a substantive sense (cf. commentary on c. 808), this provision of the canon should be adapted as necessary, depending on the university's statutes or its act of erection or approbation.

Since Catholic universities are entities whose promoters undertake a project of cultural and Christian formation, establishing a spiritual assistance service and offering a program of activities that helps students "to assimilate Catholic teaching and practice into their lives" (*Ex corde Ecclesiae*, 39) are a part of its institutional make up.

The management of these activities and the appointment of persons responsible for them may be entrusted to ecclesial institutions that do not necessarily have to be the diocesan authority, either because these institutions are the founders of a given university center, or because the academic authority has stipulated agreements by virtue of which a specific ecclesial institution will take charge of spiritual care at the university.

Obviously, this is not a question of overlapping competence between a diocesan authority and ecclesial entities. Among other reasons, this is because the bishop not only always has the power of overseeing all pastoral activities in his diocese (cf. c. 394 § 1: this oversight is intended to ensure conformance with the Gospel), but he also coordinates the various forms that the apostolate takes in the diocese. Rather, it is that the Church's pastoral activities should be characterized by harmonious collaboration among and participation by all the ecclesial components: "Close cooperation among pastoral ministry in a Catholic University and the other activities within the local Church, under the guidance or with the approval of the diocesan bishop, will contribute to their mutual growth" (*Ex corde Ecclesiae*, 41).

Further, the statutory provision entrusting the spiritual assistance of students to a given ecclesial institution in itself involves recognition and approval by a diocesan ecclesiastical authority, both with respect to the link between the *academic institution* and the Church hierarchy and with respect to the consent which the *ecclesial institution* needs in order to be able to carry out its pastoral activities.

814 **Quae de universitatibus statuuntur praescripta, pari ratione applicantur aliis studiorum superiorum institutis.**

The provisions which are laid down for universities apply equally to other institutes of higher studies.

SOURCES: *SapChr* 85–87

CROSS REFERENCES: —

COMMENTARY

Davide Cito

This last canon of chapter II describes the scope of application of the norms contained in this chapter. This norm has been confirmed by the Apostolic Constitution *Ex corde Ecclesiae*, which reaffirms the extension of canonical legislation on universities to all institutes of higher studies (cf. no. 10; art. 1 § 2).

The reason for this canon is the need to provide general rules, even when the names of centers of higher studies change, depending on various national legislations. However, this practical reason, which is greatly appropriate, should not diminish the uniqueness proper to university institutions with respect to other centers of higher studies. As Hervada has pointed out, "A University is in essence a *docens, doctor* or *magister*; without this dimension, it is a research center, not a University. At the same time, if there is no study or research, a fundamental transformation takes place: it is no longer a University (although it may call itself a University), but rather only a center of higher education."[1]

Although at first sight, this may seem to have little canonical relevance, it is important, because these institutions may perform authentic service for the Church and society to the extent that they fully realize their own professional identity, which they share with other universities or centers of higher studies in the cultural reality where they operate.

And not only this, but also the specific structure of each type of institute of higher studies—and especially in the case of universities—has a hermeneutic criterion for the interpretation of canonical norms. These norms—respecting at all times the primary need to safeguard the institution's Catholic identity—should be interpreted so as not to complicate these centers' full equivalence to their respective peers in society.

1. J. HERVADA, "Sobre el estatuto de las Universidades católicas y eclesiásticas," in *Raccolta di scritti in onore di Pio Fedele* (Perugia 1984), p. 506.

CAPUT III
De universitatibus et facultatibus ecclesiasticis

CHAPTER III
Ecclesiastical Universities and Faculties

815 **Ecclesiae, vi muneris sui veritatem revelatam nuntiandi, propriae sunt universitates vel facultates ecclesiasticae ad disciplinas sacras vel cum sacris conexas pervestigandas, atque studentes in iisdem disciplinis scientifice instituendos.**

By virtue of its mission to proclaim revealed truth, the Church has the right to have its own ecclesiastical universities and faculties to study the sacred sciences and subjects related to them, and to teach these disciplines to students in a scientific manner.

SOURCES: *DSD*; SCSUS Ordinationes, 12 iun. 1931 (*AAS* 23 [1931] 263–284); SCCE Normae, 20 maii 1968; *SapChr* 1–3; SCCE Ordinationes, 29 apr. 1979 (*AAS* 71 [1979] 500–521)

CROSS REFERENCES: c. 794 § 1, 800, 807

COMMENTARY

Davide Cito

The juridical grounds conferring upon the Church the right to found universities and centers of higher studies in any branch of knowledge ultimately goes back to the fact that the Church is a "human society capable [of] imparting education" (*GE* 3; Cf. commentary on c. 800). But in the area addressed by this canon there are also other grounds: namely, the divine mission that Christ entrusted to the Church of proclaiming revealed truth (cf. c. 747), which qualifies the Church to promote *ecclesiastical* universities or faculties "to study the sacred sciences and subjects related to them."

These research and teaching centers have existed since the earliest days of the life of the Church (cf. *SapChr, Proemio,* I), but "Ecclesiastical Faculties and Universities" as a technical-juridical term has only been explicitly defined since the Apostolic Constitution *Sapientia Christiana.*

In fact, neither the *CIC*/1917 nor the Apostolic Constitution *Deus scientiarum Dominus*, of May 24, 1931[1] on universities and faculties of ecclesiastical studies set up a category in itself of "ecclesiastical" university centers. For its part, the conciliar Declaration *Gravissimum educationis* mentions "ecclesiasticae Facultates." This Declaration somehow allowed a glimpse of the fact that the nature of the subjects studied in them could give rise to a type of university that is different from a "Catholic" university. In fact, it devotes two different paragraphs to them: no. 10 on Catholic universities and no. 11 on faculties of sacred sciences. However, it does not develop the concept of an ecclesiastical university or give it its own juridical system. This did not happen until 1979, with the appearance of the above mentioned Apostolic Constitution *Sapientia Christiana*, and it was then inserted into the *CIC*

From a general point of view, the concept of an ecclesiastical university should be related to the particular ecclesial dimension of these centers of higher studies.[2] But if we want to define from a purely juridical point of view the characteristics typifying ecclesiastical universities and faculties, it is necessary to focus on two elements that are contained in the canon and eventually explained by following canons (816 and 817) and the *SapChr* itself: i.e., the particular institutional link with the Apostolic See and the type of teaching that is given in them. As far as the second of these two elements is concerned, it may be pointed out that the domain of research and teaching is limited to the "sacred sciences and subjects related to them," i.e., directly related to the deposit of the faith. This does not preclude subjects that have nothing to do with revealed truth (foreign languages, for example), provided they are related to the faculty's specific purpose (*SapChr* 41), which is always oriented toward researching and teaching the sacred sciences. This specific purpose limits the contents of curricula in both the three traditional faculties (Theology, Philosophy and Canon Law) and related areas (cf. *SapChr* 85), as well as any new areas of studies that may arise.

The canon does not explicitly mention a link between ecclesiastical universities or faculties and the Apostolic See. It only affirms that "it belongs to the Church to have its own ecclesiastical universities and faculties," and thereby leaves their specific juridical system to other normative provisions. The term "belongs" is not intended to refer to patrimony, the founder, etc., but simply to the fact that these centers always have a

1. *AAS* 23 (1931), pp. 263–284.
2. Cf. A.M. JAVIERRE, "Criterios directivos de la nueva Constitución," in *Seminarium* 32 (1980), pp. 355–356.

specific link with an ecclesiastical authority, especially with the Holy See, which does not diminish the diversity of the various universities' or faculties' juridical statutes (cc. 816, 817).

However, we should point out that these identifying characteristics of ecclesiastical universities and faculties do not affect their academic organization, since they share the specific purposes proper to them with other universities and centers of higher studies, i.e., research at the highest scientific level and teaching (cf. *SapChr* 3). Insofar as students are concerned, "Ecclesiastical Faculties are open to all, whether ecclesiastics or laity, who can legally give testimony to leading a moral life and to having completed the previous studies appropriate to enrolling in the Faculty" (*SapChr* 31). Academic requirements stipulated by general law include the diploma required for acceptance by a university in the country in question or the region where the faculty is located (*SapChr* 32 § 1). Each faculty's statutes may set other requirements for taking various courses (*SapChr* 32 § 2).

The purposes of an ecclesiastical faculty, which are specifically university-level requirements, and the type of students attending (in view of the fact that *Gaudium et spes* 62 mentions the desire that many of the laity obtain deep formation in the sacred disciplines) distinguish these academic institutions from seminaries or other entities for the specific formation of sacred ministers or members of institutes of consecrated life, even though the latter may be linked to ecclesiastical faculties insofar as the teaching of sacred disciplines is concerned.

816 **§ 1. Universitates et facultates ecclesiasticae constitui tantum possunt erectione ab Apostolica Sede facta aut approbatione ab eadem concessa; eidem competit etiam earundem superius moderamen.**

§ 2. Singulae universitates et facultates ecclesiae sua habere debent statuta et studiorum rationem ab Apostolica Sede approbata.

§ 1 Ecclesiastical universities and faculties may be constituted only by the Apostolic See or with its approval. Their overall direction also belongs to the Apostolic See.

§ 2. Each ecclesiastical university must have its own statutes and programme of studies approved by the Apostolic See.

SOURCES: § 1: c. 1376 § 1; *DSD* 4; SCSUS Ordinationes, 12 iun. 1931, 1 (*AAS* 23 [1931] 263–284); *SapChr* 5
§ 2: c. 1376 § 2; *DSD* 5; SCSUS Ordinationes, 12 iun. 1931, 3 (*AAS* 23 [1931] 263–284); *SapChr* 7; SCCE Ordinationes, 29 apr. 1979, 6 (*AAS* 71 [1979] 500–521)

CROSS REFERENCES: —

COMMENTARY

Davide Cito

This canon stipulates the juridical elements determining the linking of ecclesiastical universities and faculties with the Church. Unlike the case of Catholic universities, the ecclesiastical authority referenced is always the Apostolic See, through the offices of the CCE (*SapChr* 5; *PB* 116). The Roman Curia's reform left the competencies of this dicastery as given by the *REU*[1] substantially unchanged.

1. The constitution of an ecclesiastical university or faculty is linked to its erection or approval by the Holy See. As regards the distinction between these two concepts, which generally appear together (cf. c. 817; *SapChr* 5–6), some authors have found a difference in treatment with respect to ob-

1. Cf. T. BERTONE, "La Congregazione per l'educazione cattolica (dei seminari e degli istituti di studi)," in *La Curia Romana nella Cost. Ap. 'Pastor Bonus'* (Vatican City 1990), p. 388.

taining juridical status[2] for the academic institution. It seems to us that, as other authors[3] have shown, it is not a matter of acts functionally oriented to any different effects. Rather, it is a matter of progressive interventions by the Holy See along a dual line: on one hand, giving direction to a center of ecclesiastical studies until it eventually becomes a university or faculty; and on the other hand, directing a non-ecclesiastical university so that it can grant academic degrees with canonical effect in the Church.[4]

The link with the Holy See does not end when an ecclesiastical university or faculty is constituted, but continues for the entire life of the academic institution, since the Holy See is competent to exercise "full direction." The phrase "superius moderamen"—analogous to that of c. 315 on public associations of the faithful; but in this case the direction is exercised through the chancellor as the institutional representative of the Holy See (cf. *SapChr* 12) or through the CCE—includes actions of a varied nature, some of which are incumbent upon the chancellor and others directly on the congregation. Of the latter, the acts of appointing or confirming the rector and president (*SapChr* 18), the granting of *nihil obstat* to professors prior to their appointment to permanent posts or promotion to the highest category of teacher (*SapChr* 27 § 2) are mentioned; further, every three years the chancellor should send the congregation a detailed report on academic status[5]; moreover, every year the rector or president should send the congregation a statistical summary following the outline set by the congregation itself.[6]

2. Paragraph 2 repeats *SapChr* 7, but extends the approval requirement to the program of studies also. Article 6 of the "normas aplicatives" of *SapChr* refers to Appendix I for a more detailed presentation of the criteria to be followed when drafting statutes for ecclesiastical universities and faculties, pointing out ten main points that must be addressed:

1) *name*, *nature* and *purpose* of the university;

2) *governing entities:* chancellor, individual and collegial academic authorities;

3) *professors*;

4) *students*;

5) *officials* and *auxiliary personnel*;

6) *program of studies*;

2. Cf. M. SÁNCHEZ VEGA, S.M., "El régimen jurídico de las universidades eclesiásticas y la constitución apostólica 'Sapientia Christiana,'" in *Apollinaris*, 53 (1980), pp. 349–352.
3. Cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 816, in *Pamplona Com.*
4. Cf. e.g., SCCE, *De facultatibus theologicis catholicis in studiorum universitatibus civilibus in Germania sitis*, January 1, 1983, in *AAS* 75 (1983), pp. 336–341.
5. Cf. *Norme applicative* from *SapChr* art. 8, 6°.
6. Ibid., art. 14,6°.

7) *academic degrees*;

8) *subsidiary facilities*: library;

9) *financial administration*;

10) *relationships with other faculties.*

Although there is no norm that is explicitly analogous to c. 314—on revising or modifying the statutes of public associations—given the juridical nature of ecclesiastical universities or faculties, it may be said that the same system is applicable to them. Consequently, the CCE's approval is required for a modification of the statutes or a substantial change in the program of studies.

817 **Gradus academicos, qui effectus canonicos in Ecclesia habeant, nulla universitas vel facultas conferre valet, quae non sit ab Apostolica Sede erecta vel approbata.**

Only a university or a faculty established or approved by the Apostolic See may confer academic degrees which have canonical effects in the Church.

SOURCES: c. 1377; *DSD* 6–10; SCSUS Ordinationes, 12 iun. 1931, 2 (*AAS* 23 [1931] 263–284); *SapChr* 6, 9; SCCE Ordinationes, 29 apr. 1979, 7 (*AAS* 71 [1979] 500–521)

CROSS REFERENCES: —

COMMENTARY

Davide Cito

"The canonical value of an academic degree is that it is a qualification for holding ecclesiastical offices that require a degree. This is particularly important for teaching the sacred sciences in faculties, seminaries and equivalent schools."[1] The Codal norm requires a doctorate or licentiate earned at an ecclesiastical university or faculty in order to hold a position to teach philosophical, theological or juridical courses at a seminary (c. 253 § 1); a doctorate or at licentiate in the Sacred Scriptures, Theology or Canon Law earned at an institute of higher studies approved by the Apostolic See to qualify as candidates for the episcopate (c. 378 § 1,5°), although the lack of this degree may be allowed if the candidate is "vere peritus" in these disciplines; a doctorate or at least a licentiate in Canon Law for the office of judicial vicar and adjutant judicial vicars (c. 1420 § 4), judges (c. 1421 § 3), promoters of justice and defenders of the bond (c. 1435).

This canon's scope is thus limited to meeting a qualifying requirement in order to assume certain duties in the Church, since the canonical system gives importance to studies done at institutions that do not have the approbation of or are not erected by the Apostolic See. Thus a degree required for acceptance by a civil university in one's own country or region where a faculty is located is sufficient for enrolling in an ecclesiastical faculty (*SapChr* 32 § 1), unless said faculty's statutes stipulate other requirements (*SapChr* 32 § 20). Also, at the discretion of the faculty, anyone who has earned a doctorate in civil law may progress more rapidly

1. *Norme applicative* from *SapChr* art. 7 §1.

through the canon law course of studies.[2] Finally, the possibility of obtaining confirmation of certain studies done elsewhere should be mentioned (*SapChr* 45).

The academic degrees that may be conferred by an ecclesiastical faculty are: the bachelor's, the licentiate and the doctorate (*SapChr* 47 § 1). Other qualifications may be added in accordance with each faculty's program of studies (*SapChr* 47 § 2). There is no obligation to use these exact terms to describe academic degrees in a faculty's statutes, provided degrees are uniformly described at all ecclesiastical faculties of a given region and their equivalence to the degrees mentioned above is clear (*SapChr* 48).

The range of disciplines in which academic degrees may be conferred with the authority of the Holy See include not only the three traditional faculties (Theology, Canon Law and Philosophy), but also the other fifteen faculties or institutes "ad instar facultatis" indicated in *SapChr* 85, which are more or less closely related to the sacred sciences: Christian archaeology, Biblical studies and ancient Eastern studies, Church history, Christian and classical literature, Liturgy, Missiology, Sacred Music, Psychology, Educational science or Pedagogy, Religious science, Social sciences, Arabic studies and Islamology, Mediaeval studies, Oriental Ecclesiastical studies, "Utriusque Iuris" (both canon and civil law).

2. Norme applicative from *SapChr* art. 57 §1.

818 **Quae de universitatibus catholicis in cann. 810, 812 et 813 statuuntur praescripta, de universitatibus facultatibusque ecclesiasticis quoque valent.**

The provisions of cann. 810, 812 and 813 concerning catholic universities apply also to ecclesiastical universities and faculties.

SOURCES: *DSD* 14, 19–22; SCSUS Ordinationes, 12 iun. 1931, 5 (*AAS* 23 [1931] 263–284); SCCE Normae, 20 maii 1968, 17–22; *SapChr* 22–30; SCCE Ordinationes, 29 apr. 1979, 1, 64 (*AAS* 71 [1979] 500, 517)

CROSS REFERENCES: cc. 810, 812, 813

COMMENTARY

Davide Cito

This canon concerns the prescriptions given for Catholic universities in the areas of professors' suitability (c. 810), the "mandate" to teach theological disciplines (c. 812), and the pastoral care of students (c. 813), and stipulates that these prescriptions are also applicable to ecclesiastical universities and faculties.

With respect to c. 810, the following may be said: by virtue of the universal nature of ecclesiastical academic institutions, the link between a professor and a university center, from a substantive point of view, whether it is "Catholic" or "ecclesiastical" (see commentary on c. 815), is virtually identical. Consequently, the considerations we mentioned regarding suitability requirements with respect to both academic/pedagogical suitability and conduct are fully applicable to this canon (see commentary on c. 810).

On the other hand, as far as the applicability of c. 812 is concerned, it is necessary to point out that there are opposing doctrinal interpretations. The question is whether article 27 § 1 *SapChr* prevails or not; it uses the phrase "missio canonica" instead of "mandate" (cf. commentary on c. 812 for the juridical meaning of both terms and the various doctrinal positions on the subject). At this point, we can only add that the Instruction *Donum veritatis* on the ecclesial vocation of theologians states in no. 22 that "the collaboration between theologians and the magisterium takes place in a special way when a theologian receives a canonical mission or mandate to

teach (*missionem canonicam vel mandatum docendi*)."[1] Further, the Apostolic Constitution *Ex Corde ecclesiae* explicitly states that ecclesiastical universities or faculties, including faculties at Catholic universities, are subject to the norms of *SapChr.*[2] Various interpretations are therefore possible, although a literal reading of the norms and the practice that has been imposed lead us to think that there is a gradual trend toward considering the mandate and the canonical mission to be the same thing, which expands the concept of "missio canonica" and "activities in the name of the Church."

As far as the reference to c. 813 is concerned, the institutional linking of ecclesiastical faculties or universities with the Apostolic See places the primary competence for pastoral care on the chancellor as the ordinary prelate and representative of the Holy See (*SapChr* 12 and 13 § 1). If the chancellor is not also the local ordinary, it is necessary to adopt norms for the harmonious exercise of their respective duties (*SapChr* 12 and 13 § 1).

1. CDF, Instr. *Donum veritatis*, no. 22, in *AAS* 82 (1990), p. 1559.
2. JOHN PAUL II, Ap. Const. *Ex corde Ecclesiae*, August 15, 1990, in *AAS* 82 (1990), pp. 1475–1509, no. 1 §2.

819 **Quatenus dioecesis aut instituti religiosi immo vel ipsius Ecclesiae universae bonum id requirat, debent Episcopi dioecesani aut institutorum Superiores competentes ad universitates vel facultates ecclesiasticas mittere iuvenes et clericos et sodales indole, virtute et ingenio praestantes.**

In so far as the good of a diocese or religious institute or indeed even of the universal Church requires it, young persons, clerics and members of institutes, outstanding in character, intelligence and virtue, must be sent to ecclesiastical universities or faculties by their diocesan Bishops or the Superiors of their institutes.

SOURCES: c. 1380; *SCCong* Decr. *Nemo de sacro*, 30 apr. 1918 (*AAS* 10 [1918] 237–238); Secr. St. Litt. circ., 18 nov. 1920; SCSUS Litt. circ., 15 aug. 1931; SCSUS Normae *Nessun sacerdote*, 20 aug. 1942; SCSUS Normae, 1 nov. 1950; SCSUS Let, 18 ian. 1958; *OT* 18; *GE* 10; *AG* 16; *RFIS* 82–85; SCCE Normae, 22 apr. 1971; *DPMB* 195

CROSS REFERENCES: cc. 279

COMMENTARY

Davide Cito

This canon, inspired by c. 1380 *CIC*/1917, stresses the specific duty of diocesan bishops and religious superiors to send young persons, clerics or religious to ecclesiastical universities so that they can obtain academic degrees.

This does not mean that ecclesiastical universities and faculties are reserved for these categories of the faithful. On the contrary, "Ecclesiastical Faculties are open to all, both ecclesiastics or laity, who can legally give testimony to leading a moral life and to having completed the previous studies appropriate to enrolling in the Faculty" (*SapChr* 31). Similarly, Vatican II affirms that "it is to be hoped that more of the laity will receive adequate formation in the sacred disciplines and that some among them will dedicate themselves professionally to these studies and contribute to their advancement" (*GS* 62). This desire has been juridically formalized in c. 229 §§ 1 and 2, where the right of the lay faithful to obtain an academic education in the sacred disciplines and earn respective academic degrees is recognized. At the same time, this right is a true duty in that each of the faithful has the obligation to obtain formation appropriate to his abilities and situation.

Further, "if we expect every Christian to be prepared to make a defense of the faith and to account for the hope that is in us, then all the more should candidates for the priesthood and priests have diligent care of the quality of their intellectual formation in their education and pastoral activity. For the salvation of their brothers and sisters they should seek an ever deeper knowledge of the divine mysteries" (*PDV* 51). For this reason, the canon, without juridically ascribing an area to clerics and religious only, more specifically describes their obligations in this regard, given their dedication to the Church's public mission.

The juridical elements that can be extracted from this canon affect diocesan bishops and religious superiors first: they have the obligation to send young persons, clerics or religious to ecclesiastical universities and faculties ("debent ... mittere"). The extent of this obligation is determined by two factors: "the good of a diocese or religious institute or indeed even of the universal Church"; and the existence of persons who are "outstanding in character, intelligence and virtue."

Although the assessment of these factors is incumbent upon the pastors, it must be taken into account, on one hand, that their pastoral governing mission also includes the duty to ensure that all the offices and positions requiring an academic degree (cf., e.g., cc. 253 § 1, 1420 § 4, 1421 § 3, 1435, etc.) are held by persons that meet these requirements and more generally, to ensure that there are priests and religious that are satisfactorily qualified to carry out their apostolic task and formation more effectively.[1] On the other hand, this duty is not limited to providing for the most urgent needs, but also, to the extent possible, must fit into a serious pastoral plan for the future good of the community of faithful entrusted to their care.

Finally, it must not be forgotten that an important aspect of the *sollicitudo omnium Ecclesiarum* is the contribution by trained personnel to the functioning of the bodies carrying out interdiocesan activities, such as bishops' conferences, ecclesiastical or Catholic universities, etc., in addition to assisting other dioceses with insufficient clergy by sending suitable priests.

It is necessary that pastors ensure that all of this is properly stressed at formation centers, seminaries and dependent novitiates.

It may be deduced from a study of cc. 273 and 274 § 2 taken together that young clerics (and by analogy, religious) who have the required qualities are obligated to attend ecclesiastical universities or faculties, provided they are invited to do so by their own pastor. This does not prevent young persons themselves from approaching pastors to express their interest and then abiding by their pastors' instructions.

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1. Cf. e.g., *SCCong, Circular* directed to the presidents of the bishops' conferences, November 4, 1969, no. 5, in *AAS* 62 (1970), p. 125; CCE, *Direttive sulla preparaziione degli educatori nei seminari*, November 4, 1993, nos. 6–9, in *L'Osservatore Romano*, Supplement to no. 8, January 12, 1994 (English edition: January 19, 1994, pp. 7–14).

820 **Curent universitatum et facultatum ecclesiasticarum Moderatores ac professores ut variae universitatis facultates mutuam sibi, prout obiectum siverit, praestent operam, utque inter propriam universitatem vel facultatem et alias universitates et facultates, etiam non ecclesiasticas, mutua habeatur cooperatio, qua nempe eaedem coniuncta opera, conventibus, investigationibus scientificis coordinatis aliisque mediis, ad maius scientiarum incrementum conspirent.**

Moderators and professors of ecclesiastical universities and faculties are to ensure that the various faculties of the university cooperate with each other, to the extent that their aims permit. They are also to ensure that between their own university or faculty and other universities and faculties, even non-ecclesiastical ones, there be a mutual cooperation in which, through conferences, coordinated scientific research and other means, they work together for the greater increase of scientific knowledge.

SOURCES: *GE* 12; *GS* 62; SCCE Normae, 20 maii 1968, 64; *SapChr* 64, SCCE Ordinationes, 29 apr. 1979, 49 (*AAS* 71 [1979] 500–521)

CROSS REFERENCES: —

COMMENTARY

Davide Cito

"By its very nature, a University develops culture through its research ... It is open to all human experience and is ready to dialogue with and learn from any culture"[1]; therefore, the potential for collaboration and dialog with similar academic institutions, eschewing any isolationism and exclusivism, is a part of the essence of the university spirit. At the same time, the canon's invitation to encourage cooperation among ecclesiastical universities or faculties "and other universities and faculties, even non-ecclesiastical ones," is given in the context of the need to "confront the complex problems facing modern society, and in order to strengthen the Catholic identity of the Institutions."[2] These words mean the effective possibility "to assure in an institutional manner a Christian presence in the university world confronting the great problems of society and culture."[3]

1. JOHN PAUL II, Ap. Const. *Ex corde Ecclesiae*, August 15, 1990, in *AAS* 82 (1990), pp. 1475–1509, no. 43.
2. Ibid., art. 7 § 1.
3. Ibid., 13.

This commitment falls upon the moderators and professors of ecclesiastical universities and faculties. The term "moderators" means all academic authorities, individual or collegial, that preside over a university institution. In addition to the chancellor, representative of the Holy See, and ordinary prelate on whom a university or faculty is juridically dependent (*SapChr* 12 and 13), there is also a rector, i.e., the person who directs the university,[4] a president, i.e., the person who presides over an institute or "sui iuris" faculty,[5] and a dean, who presides over a faculty that is part of a university.[6] Among collegial authorities we find a university council (academic senate) and faculty councils. The statutes may provide for other special councils with specific competencies for certain parts of university life.[7]

The list of possibilities for collaboration given in article 64 of *SapChr* and article 49 of the *normas Aplicativas* of this Constitution and in the canon at hand includes possibilities for collaboration at all levels: teaching, academic, publishing, etc.

With respect to university institutions with which mutual collaboration is to be encouraged, the canon gives a working priority: collaboration among the various faculties at the same university to the extent that their aims permit (cf. also *SapChr* 64). Next come all other universities and faculties, including non-ecclesiastical ones, i.e., Catholic and all others. In this regard, it should be noted that from the appearance of the *SapChr* on, emphasis has been increasingly placed on the peculiar identity of ecclesiastical faculties, without thereby separating them from the university world. In fact, article 49 § 2 of the *normas Aplicativas* of this Constitution provided that this collaboration should be extended to other faculties, "even *non-Catholic faculties*," thus giving to understand that not only do ecclesiastical faculties constitute a particular "species" within the broader "genus" of Catholic universities, but also that collaboration with all academic institutions should be sought. Further, the canon uses the phrase "even *non-ecclesiastical ones*." But this does not entail any restriction on areas of collaboration; rather, this is intended to emphasize further the uniqueness of the category of "ecclesiastical universities." It thus leaves intact the possibilities of collaboration with university institutions of all kinds,[8] provided their own identity is carefully maintained."[9] This is further affirmed in Apostolic Constitution *Ex corde Ecclesiae*, 7, which addresses collaboration between Catholic universities and other academic institutions.

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4. *Norme applicative* from *SapChr* 13 §1.
5. Ibid.
6. Ibid.
7. Ibid., 12.
8. Cf. J. MANZANARES, "Las universidades y facultades eclesiásticas en la nueva codificación canónica," in *Seminarium* 23 (1983), p. 588.
9. *Norme applicative* of *SapChr* 49 § 2.

821 **Provideant Episcoporum conferentia atque Episcopus dioecesanus ut, ubi fieri possit, condantur instituta superiora scientiarum religiosarum, in quibus nempe edoceantur disciplinae theologicae aliaeque quae ad culturam christianam pertineant.**

Where it is possible, the Bishops' Conference and the diocesan Bishop are to provide for the establishment of institutes for higher religious studies, in which are taught theological and other subjects pertaining to christian culture.

SOURCES: *GE* 10; *DPMB* 69, 70

CROSS REFERENCES: —

COMMENTARY

Davide Cito

This canon echoes a provision from the Pastoral Directory for Bishops which urges that every effort be made to ensure that as many of the laity as possible take specialized ecclesiastical studies (*DPMB*, 69). It entrusts to bishops' conferences and diocesan bishops the responsibility of founding wherever possible institutes of higher religious studies in addition to those erected by the Holy See.

The lack of further information in the canon has prevented doctrine from delineating with precision the nature of these institutions,[1] which is still not at all clear.[2]

From the point of view of juridical regulations, this Codal provision was developed in the CCE's provisional *Normativa*[3] in order to "help clarify the structure of Institutes of Higher Religious Studies." According to this "normativa," these institutions, even though they are academic in character, differ from the purpose proper to a Theological faculty (no. 2.1). Its purpose is to "promote the theological formation of the laity ... prepare candidates for various ecclesial ministries and services;

1. Cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 821, in *Pamplona Com*; L. DE ECHEVERRÍA, commentary on c. 821, in *Salamanca Com*.
2. Cf. *Gli istituti di scienze religiose nella Chiesa, per uno statuto epistemologico* (Bologna 1991).
3. CCE, *Normativa per l'Istituto Superiore di Scienze Religiose*, May 12, 1987, prot. 7617/87.

certifying Catholic Religion professors for schools" (no. 2.2). The responsibility for the functioning and promotion of institutes of higher religious studies is incumbent upon diocesan bishops in all areas related to safeguarding and promoting the Catholic faith, recruiting and certifying the teaching staff, and matters having to do with the institute's finances. The supervision of the institute's pastoral goals and the territory it encompasses is incumbent upon the bishops' conference. Finally, all matters related to the institute's academic standards are incumbent upon its sponsoring theological faculty (no. 4).

Insofar as an institute's juridical system is concerned, the duties of a Grand Chancellor of an ecclesiastical university are assigned to the bishop of the diocese where the institute is headquartered (nos. 7–9). *SapChr* norms govern professors and students in areas having to do with suitability requirements (nos. 18–23).

Studies taken at an institute of higher religious studies lead to an academic degree: the "Master's in Religious studies" granted by the Theological faculty sponsoring the center (nos. 30–32).

TITULUS IV
De instrumentis communicationis socialis et in specie de libris

TITLE IV
The Means of Social Communication and Books in Particular

INTRODUCTION

Carlos J. Errázuriz

1. *Organization of the CIC*

The *CIC*, like the *CCEO*: cf. cc. 651–666, has expanded the object of the parallel title of *CIC*/1917 (*De praevia censura librorum eorumque prohibitione*), which only mentioned books and other writings intended for public disclosure. In fact, the current title mentions means of social communication in general, including books: *De instrumentis communicationis socialis et in specie de libris*. The description of ecclesiastical magisterium in *Inter mirifica* of Vatican II, which is entitled *Decretum de instrumentis communicationis socialis*, is thus echoed in canonical legislation.

The inclusion of books among instruments of social communication has been criticized by certain specialists, especially because books, as a general rule, are not part of modern mass media.[1] However, there is no question that the publishing world is now becoming a mass medium, and increasingly so, and it operates in growing contact with the world of the press and audiovisual media. Further, it is especially important from the canonical point of view to point out a common basic problem that justifies the option chosen in the Codal system, without affecting the fact that the specific characteristics of each medium determine significant differences in the respective juridical-canonical norm.

1. Cf. e.g. E. BARAGLI, "I 'mass media' nel nuovo Codice di Diritto Canonico," in *La Civiltà Cattolica* 134 (1983), p. 218.

However, mention of other instruments of social communication is only made in three of the canons in this title: the two introductory canons (cc. 822 and 823) and c. 831 § 2, concerning a very specific point. Other references to these instruments are scattered in several places in *CIC*.[2] These references have been the object of special attention in certain literature that is especially interested in the Church's pastoral care in this area,[3] at times lamenting the new Code's insufficient sensitivity to this area.[4] In order to assess this criticism, perhaps it would be advisable to look more closely at what the specific purpose of canon law is in this area (cf. below, no. 3; and commentary on cc. 822 and 833). This purpose is better achieved through norms than by exhortations and programmatic directives, which are more appropriate for other types of magisterial-pastoral documents. However, this does not prevent us from noting a somewhat excessive sparseness in the universal law as far as juridical norms per se are concerned, since it can be said that except for quite concrete arenas, canonical regulations on the other instruments simply refer to particular law.[5] On the other hand, *CCEO*, in addition to expressly relegating to particular law more detailed regulations on the use of audiovisual media with respect to Catholic doctrine or morals (cf. c. 653), stipulates that common law norms on books apply to all writings or messages (*sermo*) that are reproduced by any technical means and intended for public release. Naturally, this application must take into account differences between various types of communication (e.g., for timely communication requirements).

2. *Historical precedents of the norms of this title*

As is well known, the invention of the press, especially in the historical context of the Protestant Reformation, gave rise to an intense juridico-canonical response effort by the Church in defense of the Catholic faith, as well as other aspects of the positive use of the press for ecclesial purposes. Two canonical institutions developed in this regard: prior censorship and the prohibition of books contrary to the faith and morals. *CIC*/1917 echoed

2. Cf. cc. 747 § 1 (use of the means of communication proper for the Church in her mission of evangelization); 761 (the diffusion of the legitimate eclesiastical authority's statements written for particular occasions); 779 (use in catechesis); 804 §1 (use in Catholic religious education); 1063,1° (use in marriage pastoral formation).

3. Apart from the cited article by BARAGLI, cf. e.g. p. MONNI, *L'informazione: un diritto-un dovere. Rassegna di legislazione internazionale* (Cagliari 1989), pp. 389–447; H. MUSSINGHOFF, "Communicatio socialis in novo Codice," in *Monitor Ecclesiasticus* 112 (1987), pp. 385–405.

4. Cf. e.g. A. RUSZKOWSKI-I. RUSZKOWSKA, "La communication sociale: parent pauvre du Code de droit canonique (canons 822–832)," in *Studia canonica* 23 (1989), pp. 471–484.

5. On the importance of the particular law in this regard, cf. J.A. FUENTES, "La función de enseñar," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 455.

the extensive former legislation in title 23 of book III (cc. 1384–1405), which begins with this statement: "The Church has the right to demand that the faithful not publish books that have not been reviewed by the Church in advance and to prohibit with a just cause any books published by any person" (c. 1384 § 1). This historic legislation[6] had been expressed essentially again shortly before by Leo XIII[7] and supplemented in certain areas by St. Pius X in his documents against modernism.[8]

After Vatican Council II, ecclesiastical legislation on the prohibition of books at the universal level was repealed by abrogating the juridical status of the *Index librorum prohibitorum* (a list of books specifically prohibited by the Holy See), as well as the general *ipso iure* prohibitions and the canonical penalties stipulated for violating this discipline.[9] As is logical, this change left the moral grounds for this legislation unchanged: the need to prevent dangers to the faith and morals that might be posed by written materials. This aspect, pointed out by Vatican Council II (cf. *IM* 7, 10–12), was expressly clarified upon repealing the canonical prohibition and was recently explained in *CCEO* (cf. cc. 652, 665). On the other hand, the possibility of introducing prohibitions in concrete cases[10] or by particular law[11] naturally remains open (here too the *CCEO* is explicit about this possibility: cf. c. 652 § 1). In any case, once the universal canonical system of prohibiting books was repealed, this whole delicate and important issue of the use of means of social communication is now entrusted above all to the moral responsibility of the faithful themselves with respect to themselves and other persons whose formation, for various reasons, is entrusted to them (responsibility of parents, educators, etc.).

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6. One can find a synthesis and bibliography on this topic in p. CIPROTTI, "Libri proibiti (diritto canonico)," in *Enciclopedia del diritto*, vol. XXIV (Milan 1974), pp. 630–635.

7. Cf. the Const. *Officiorum ac munerum*, January 25, 1897, in p. GASPARRI, *Codicis Iuris Canonici Fontes*, vol. III (Rome 1933), no. 632, pp. 502–512.

8. Cf. the Const. *Officiorum ac munerum*, January 25, 1897, in p. GASPARRI, *Codicis Iuris Canonici Fontes*, vol. III (Rome 1933), no. 632, pp. 502–512.

9. Cf. SCDF, *Notification* regarding the Index of forbidden books, June 14, 1966, in *AAS* 58 (1966), p. 445; and the preceding interpretive Decree, November 15, 1966, ibid., p. 1186. Between these decrees, cf. R.R. BORTOLOTTI, "Librorum prohibitio iuxta notificationem S.C. pro Doctrina Fidei, die 14 iunii 1966," in *Periodica* 56 (1967), pp. 116–138. After the interpretive decree, cf. G. MAY, "Die Aufhebung der kirchlichen Bücherverbote," in K. SIEPEN-J. WEITZEL-P. WIRTH (Eds.), *Ecclesia et ius. Festgabe für A. Scheuermann zum 60. Geburtstag*, (Munich-Paderborn-Vienna 1968), pp. 547–571. Recently, cf. W. REES, "Der Schutz der Glaubens-und Sittenlehre durch kirchliche Gesetze. Index librorum prohibitorum. Bücherzensur. Lehrbeanstandungsverfahren. Nachkonziliare Änderungen und gegenwärtiger Rechtszustand," in *Archiv für katholisches Kirchenrecht* 160 (1991), pp. 3–24; and D. COMPOSTA, "L'Indice dei libri proibiti," in *Euntes docete* 45 (1992), pp. 357–407. For more sources, cf. note 3 in G. MAY, art. cit. (pp. 548ff).

10. Cf. for example CDF, *Decreto sobre algunas doctrinas y prácticas de la asociación Opus Angelorum*, June 6, 1992, in *AAS* 84 (1992), pp. 805ff.

11. Cf. the example of a prohibition by a Latin American bishop in 1975, reprinted in L. DE ECHEVERRÍA, "La vigilancia episcopal sobre la publicación de libros," in *Revista española de Derecho Canónico* 31 (1975), pp. 352ff.

After Vatican II a new norm, which is still in effect, was promulgated regarding the procedure for the review and potential rejection by the SCDF of teachings concerning faith or morals.[12] Although this procedure is not limited to teachings put forth in written publications, in reality it is applied mainly to them. In any case, a distinction should be made between rejecting teachings (which is a doctrinal judgment of incompatibility with the faith or morals) and prohibiting books (a disciplinary measure having to do with the conduct of the faithful with respect to books containing erroneous or dangerous teachings).

Prior censorship has also been superseded by post-conciliar legislation by virtue of SCDF's Decree *Ecclesiae pastorum* concerning the vigilance of books by the pastors of the Church.[13] Apart from not using the term "censorship," the new discipline is characterized above all by prescribing a license or approbation as obligatory only for certain categories of books that are especially relevant to the Church by virtue of either their contents (books of Sacred Scripture, liturgical and prayer books, catechetical writings, textbooks in subjects related to the faith or morals) or the way they are distributed (books displayed or offered for sale at sacred places). Moreover, in the case of other publications with particular doctrinal or moral relevance, the obligatory prior censorship requirement has become a recommendation that these publications be submitted to the local ordinary for approval. With few modifications, this same approach has been taken by the other canons in this title, based mainly on Decree *Ecclesiae pastorum.*

3. *Juridico-canonical relevance of the instruments of social communication*

The use of instruments of social communication has a juridical dimension within the Church itself that constitutes grounds for exercising the power of governance in this area. This dimension is traditionally re-

12. C.f. *Nova agendi ratio in doctrinarum examine,* January 15, 1971, in *AAS* 63 (1971), pp. 234–236. Regarding this procedure, cf. E. CORECCO-W. AYMANS, "Magistero ecclesiale e teologia. Riflessioni sulla nuova procedura della Congregazione per la dottrina della fede nell'esame delle dottrine teologiche," in *Strumento internazionale per un lavoro teologico. Communio,* no. 14, 1974, pp. 32–46; c. DE DIEGO-LORA, "Procedimientos para el examen y juicio de las doctrinas," in *Ius Canonicum* 14 (1974), pp. 149–203; J. MEDINA, "El nuevo procedimiento para el examen de las doctrinas," ibid., 14 (1974), pp. 204–219; H. HEINEMANN, *Lehrbeanstandung in der katholischen Kirche: Analyse und Kritik des Lehrbeanstandungsverfahren* (Trier 1981).

13. March 19, 1975, in *AAS* 67 (1975), pp. 281–284. Regarding this decree, cf. L. DE ECHEVERRÍA, "La vigilancia episcopal...," cit.; E. BARAGLI, "Una costante preoccupazione pastorale della Chiesa: l''imprimatur'," in *La Civiltà Cattolica* 126 (1975) 2, pp. 436–449; F.J. URRUTIA, "De limitibus libertatis scribendi fidelium iuxta legem canonicam," in *Periodica* 65 (1976), pp. 529–583.

lated above all with the guardianship of the doctrine of the faith, to the point that during the work on the revision of the Code it was suggested that this title be called *De fidei doctrina tuenda*,[14] and in some manuals this matter is discussed under this title.[15]

This discipline thus falls in the domain of the duty of preserving the word of God in the Church,[16] with respect to which there are true juridical rights and duties both on the level of the fundamental equality of the baptized (the right of the faithful to preserve this word in its divine authenticity: cf. c. 748 § 1; the related juridical duty of the faithful to pass it on or the duty of communion in the profession of faith: cf. c. 209 § 1 with respect to c. 205), as well as on the level of the hierarchical distinction within the people of God (the right-duty of the sacred pastors with respect to the magisterium, a visible guarantee of communion in faith, and the related duty of obedience to this magisterium on the part of all the members of the Church: cf. cc. 212 § 1, 749–754).

However, the canonical relevance of the means of communication also extends to other areas. First, from the point of view of the effective conduct of the Church's evangelizing mission by means of these instruments, the canonical norms contain above all the Church's self-organizing provisions as an institution with respect to its activity in this area (e.g., being involved with the creation and functioning of specialized pastoral bodies), as well as exhortations directed at persons working in this field and the faithful in general (cf. commentary on c. 822).

On the other hand, also from the perspective of protecting the legitimate freedom of the faithful, the use of instruments of communication presents an undeniable juridico-canonical consideration. *CIC* declarations on the rights of the faithful and the laity (cf. cc. 208–231), principally their fundamental right to proclaim the word (cf. cc. 211, 225) and to express their opinion on matters related to the good of the Church, should be taken into account, within communion, naturally (cf. cc. 212 § 3, 218). Therefore it is possible to speak of a true right to public opinion in the Church.[17]

Closely related matters on the so-called "Right to Information"[18] are also raised in the Church. These matters are especially delicate and complex in an ecclesial context. Above all, the right of the faithful to

14. Cf. *Comm.* 21 (1981), p. 280.

15. Cf. e.g. H. HEINEMANN, "Schutz der Glaubens- und Sittenlehre," in J. LISTL-H. MÜLLER-H. SCHMITZ (Eds.), *Handbuch der katholichen Kirchenrechts* (Regensburg 1983), §66, pp. 567–578.

16. I have dealt further with this issue in *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli* (Milan 1991), pp. 77–164.

17. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 3rd ed. (Pamplona 1991), pp. 144–149.

18. Regarding this discipline in the context of civil law, cf. e.g. J.M. DESANTES, *Fundamentos del Derecho de la Información* (Madrid 1977); and C. SORIA, *Derecho de la Información: análisis de su concepto* (San José de Costa Rica 1987).

information within the Church should be protected. Although this right is not expressly mentioned in the Code (which would perhaps have been desirable[19]), it obviously exists *ex natura sua* and was the subject of an explicit declaration in the pastoral Instruction *Communio et progressio*,[20] no. 119. At the same time, the limits of this right should also be juridically protected, insofar as both the common ecclesial good and the good of other faithful and other persons are concerned. Among other issues, the matter arises here of the protection of the right to a good reputation and privacy (cf. c. 220) and the right to confidentiality within the Church (in its various forms: sacramental seal, confidentiality of office, etc.).[21]

19. Cf. E. BARAGLI, "Nel ventennale dell' 'Inter mirifica': i mass media nel nuovo 'Codice di Diritto Canonico,'" in *Palestra del Clero* 63 (1984), pp. 152–153.
20. This Instr. was issued by the PCSCM to ensure the application of the Decr. *IM* and following its mandate: May 23, 1971, in *AAS* 63 (1971), pp. 593–656).
21. Cf. the explanation of the Instr. *Communio et progressio*, cit., no. 121. Cf. cc. 471,1°, 983–984, 1388, 1455, 1457, 1546, 1559, 1598, 1602 § 2. Regarding pontifical secrecy, cf. SECR. ST., Instr. *Secreta Continere*, February 4, 1974, in *AAS* 66 (1974), pp. 89–92; RGCR, 36.

822 **§ 1. Ecclesiae pastores, in suo munere explendo iure Ecclesiae proprio utentes, instrumenta communicationis socialis adhibere satagant.**

§ 2. Iisdem pastoribus curae sit fideles edocere se officio teneri cooperandi ut instrumentorum communicationis socialis usus humano christianoque spiritu vivificetur.

§ 3. Omnes christifideles, ii praesertim qui quoquo modo in eorundem instrumentorum ordinatione aut usu partem habent, solliciti sint operam adiutricem actioni pastorali praestare, ita ut Ecclesia etiam his instrumentis munus suum efficaciter exerceat.

§ 1. In exercising their office the pastors of the Church, availing themselves of a right proper to the Church, are to make an ample use of the means of social communication.

§ 2. Pastors are also to teach the faithful that they have the duty of working together so that the use of the means of social communication may be imbued with a human and christian spirit.

§ 3. All Christ's faithful, especially those who in any way take part in the management or use of the media, are to be diligent in assisting pastoral action, so that the Church can effectively exercise its mission through these means.

SOURCES: PIUS pp. XII, Enc. *Miranda prorsus*, 8 sep. 1957 (*AAS* 49 [1957] 765–805), IOANNES pp. XXIII, Let. *Nostra Patris*, 29 iun. 1961 (*AAS* 53 [1961] 491–495); *IM* 1–3, 13, 16; PCSCM Instr. *Communio et progressio*, 23 iun. 1971 (*AAS* 63 [1971] 593–656); *DPMB* 74

CROSS REFERENCES: cc. 747 § 1, 761, 779, 804 § 1, 1063,1°

COMMENTARY

Carlos J. Errázuriz

1. *Structure and perspective of the canon*

This canon, which has no precedents in *CIC*/1917, is a significant broadening of the thematic focus of this title. Its text is closely inspired by *Inter mirifica* 3 and 13, where the relationship between instruments

of social communication and the evangelizing mission of the Church is presented.

The canon's three paragraphs focus on this relationship from the point of view of the sacred pastors. The pastors' duty to use these instruments in carrying out their pastoral mission is mentioned first (§ 1); the pastors' duty to instruct the faithful on their duty to imbue the world of social communications with a human and Christian spirit is mentioned next (§ 2); and finally, it is stipulated that all the faithful, especially those who are involved in the world of communications, are to be diligent in supporting pastoral action taking place through the communications media (§ 3). As is done in other places in book III, it would perhaps have been useful to set forth first the faithful's juridical position as such and then proceed to describe the hierarchy's role. In this way, greater emphasis would have been given to the fact that the vital connection between the important and delicate social communications sector and the Church's mission is incumbent above all upon the very faithful that are involved in this sector, whether as professionals in the field or by virtue of habitual contact proper to all citizens, at least as a user.

2. *Apostolate of the faithful in the instruments of social communication*

The work of the faithful—especially of all the laity—in the area of social communications is currently one of the most important and incisive fields of the apostolate to imbue temporal realities with the Christian spirit (cf. *CL* 44). In the canonical system, this action appears as an exercise of the faithful's right to legitimate freedom in temporal matters (cf. c. 227) and a channel of the right to proclaim the Gospel (cf. cc. 211 and 225), and at the same time as an area in which the fundamental juridical right of communion is to be lived (cf. c. 209 § 1), especially with respect to the bond of the profession of faith (cf. c. 205). Harnessing and living the profound harmony between this freedom and communion is probably one of the greatest challenges the Church faces in this phase of inculcating the doctrine of Vatican Council II.

The foregoing is true not only for the individual involvement of the faithful in social communication, but also for common initiatives they promote in this area. In accordance with the all-encompassing nature of the Christian vocation, these initiatives—if carried out with the condition proper to a Christian—cannot be imagined outside an apostolic purpose. It is not necessary for this purpose to fall within the canonical structure for said initiatives. These initiatives may remain undertakings that were juridically conceived and organized in an exclusively secular or civil manner (in which non-Catholics may also be involved who respect this apostolic orientation and at least empathize with the human values that are to

inspire activity in the world of communications), which will often also be highly useful from the point of view of apostolic effectiveness. The risk of reducing the presence of Christians in the mass media to official Catholic instruments of communications, which are sometimes considered to be mouthpieces for a sector of civil society, with some possible confusion concerning the distinction and interrelation between the temporal order and the spiritual order, can be avoided.[1]

These initiatives of the faithful to which they have a right may be understood as being included among the apostolic initiatives proper to them (cf. c. 216). An interesting reference to this possibility (mentioned with respect to the press, but applicable to any medium) is found in *Inter mirifica* 14: "However, to form readers in a truly Christian spirit, an authentically Catholic press ought to be established and supported. Such a press, whether it be established and directed by the ecclesiastical authorities or by individual Catholics, would have for its manifest purpose to form, to consolidate and to promote a public opinion in conformity with the natural law and with Catholic doctrines and directives. It would also spread and adequately explain its relationship with the Church's life." Obviously, these objectives can only be attained to the extent that this activity is done in a thoroughly professional manner, i.e., in accordance with the technical and ethical requirements of human work in this area.

3. *Apostolic mission of the Church as an institution with regard to the means of social communication*

The apostolic importance of the activity undertaken by the faithful—acting as ordinary citizens and the faithful not claiming to represent the Church as such—naturally does not diminish in any way the importance of the Church's institutional activity with respect to social communication. Above all, as indicated in § 2 of this canon, the sacred pastors—as the principal representatives of the Church as an institution—are to promote this assumption of responsibilities by all the baptized—in particular the lay faithful—for the profound evangelization of every single person in this regard. But instruments of social communication are also to be used to carry out more efficiently the tasks proper to the institutional Church.

From the point of view of the teaching office, means of communication are a privileged channel for preaching and catechesis (which greatly

1. Regarding the relationship between these orders, cf. *LG* 36; *GS* 76; and in doctrine, G. LO CASTRO, "Ordine temporale, ordine spirituale e promozione umana," in *Nuovi accordi fra Stato e confessioni religiose* (Milan 1985), pp. 271–331. Cf. also J.L. GUTIÉRREZ, "La Iglesia ante el orden temporal (textos del Concilio Vaticano II)," in *Las relaciones entre la Iglesia y el Estado. Estudios en memoria del Profesor Pedro Lombardía* (Madrid 1989), pp. 213–226.

favors its universality and adaptation to the listeners' diverse circumstances: cf. cc. 772 § 2 and 779), as well as an extremely important way to spread the magisterium of the Church and more generally, public statements by the ecclesiastical authority on the occasion of certain events (cf. c. 761). Relationships between the ecclesiastical organization and the news media (press offices, spokespersons and press releases by dioceses, bishops' conferences, the Holy See, etc.) are becoming more and more important.

In the area of the sanctifying office, radio and television broadcasts of the Holy Mass and other liturgical ceremonies and acts of popular devotions[2] may be mentioned, as well as the possibility of obtaining an indulgence by radio or television for those who receive the blessing of the Pope.[3]

Paragraphs 1 and 3 especially refer to this pastoral use of the *munera docendi et sanctificandi*. In this context, however, mention should also be made of this sector's connection with the Church's governance office (*munus regendi*). In addition to the juridico-canonical regulations of the use of these means (which is the basic purpose of the title containing the canon in question), there is an increasing pastoral activity to promote and coordinate the presence of the Church and the faithful in the world of social communications.

Specialized pastoral bodies have been created over the last few decades to develop this activity, among which an entity of the Holy See itself corresponding to the current dicastery known as the "Pontifical Council for Social Communications" (cf. *PB* 169–170)[4] stands out. It has been in existence for over forty years. Similar bodies operate at diocesan, national and continenal levels. Also, there are associations of international Catholic organizations (OCIC for the cinema and audiovisual media, headquartered in Brussels; UCIP for the press, headquartered in Geneva; and UNDA for radio and television, headquartered in Brussels) that operate in close contact with the pastoral bodies mentioned above.[5]

There are a number of other examples of this promotional pastoral activity: the annual celebration of a World Social Communications Day instituted by Vatican Council II (cf. *IM* 18); several magisterial and pastoral documents specifically devoted to the subject (of which, in addition to the conciliar Decree, the pastoral Instruction *Communio et progressio* referenced above, issued by the PCSCM in 1971, and followed twenty years later by another pastoral Instruction *Aetatis novae*, issued by what is now

2. Cf. *SC* 20; Instr. *Communio et progressio*, from May 23, 1971, *AAS* 63 (1971), pp. 593–656, no. 151.

3. Cf. *SAP*, Decree, December 14, 1985, in *AAS* 78 (1986), pp. 293–294.

4. Cf. p. DUZNIAK, *Il Pontificio Consiglio delle Comunicazioni Sociali: storia, struttura e funzioni*, with a presentation by Card. A.M. DESKUR, President Emeritus of the same Pontifical Council, *pro manuscripto* (Rome 1991).

5. Cf. *IM* 20–22; Instr. *Communio et progressio*, cit., nos. 168–180.

known as the PCSC,[6] merits special mention, as does the Church's participation in various public and private organizations, national and international, that are related to social circumstances, etc.).

Finally, it is not only possible that some programs or space in certain public or private media may appear to be officially linked with the Church, but also that some means of communication as such are institutionally linked both with entities of the ecclesiastical organization (the Holy See, bishops' conferences, dioceses, parishes, etc.) and with other entities whose activities may to some extent commit the Church as an institution (religious institutes, public associations of the faithful, etc.). These means are what the Code calls "proper" to the Church (cf. c. 747 § 1). The recent CDF Instruction "On Certain Aspects Related to the Use of Instruments of Social Communications for the Promotion of the Doctrine of the Faith"[7] (having referred in no. 14 to the apostolate of the faithful in the area of publishing, understood more broadly) gives special emphasis to "publishing activity by Catholic institutions" (no. 15), and particularly to "publishing houses of religious" (no. 18), stressing the responsibility arising from their special bond with the Church. Since in these cases, there is often some kind of institutional presence of the Church in temporal realities,[8] special prudence should be exercised in these means of communication to avoid even the appearance that the Church as such is taking certain positions contingent on political, economic, cultural or other issues within the broad area where Catholics may freely express their opinion.

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6. February 22, 1992, in *AAS* 84 (1992), pp. 447–468. Other recent documents regarding this material are: PCSC, *Criterios de colaboración ecuménica e interreligiosa en el campo de las comunicaciones sociales,* October 4, 1989, Italian translation in *EV,* vol. XI (Bologna 1991), nos. 2657–2679; SCCE, *Orientaciones para la formación de los futuros sacerdotes acerca de los instrumentos de comunicación social,* March 19, 1986, Italian translation in *EV,* vol. X (Bologna 1989), nos. 75–116. (For preceding documents, cf. the summary of E. BARAGLI, *Comunicazione, comunione e Chiesa* (Rome 1973)).

7. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27. Regarding its juridical nature, cf. P.V. PINTO, "L'Imprimatur: storia e normativa," in *Euntes Docete* 46 (1993), pp. 110ff.

8. Cf. J. HERVADA, "Elementi per una teoria fondamentale sulla relazione Chiesa-mondo," in *Ius Ecclesiae* 2 (1990), p. 59.

823 **§ 1. Ut veritatum fidei morumque integritas servetur, officum et ius est Ecclesiae pastoribus invigilandi, ne scriptis aut usu instrumentorum communicationis socialis christifidelium fidei aut moribus detrimentum afferatur; item exigendi, ut quae fidem moresve tangant a christifidelibus edenda suo iudicio subiciantur; necnon reprobandi scripta quae rectae fidei aut bonis moribus noceant.**

§ 2. Officium et ius, de quibus in § 1, competunt Episcopis, tum singulis tum in conciliis particularibus vel Episcoporum conferentiis adunatis quoad christifideles suae curae commissos, supremae autem Ecclesiae auctoritati quoad universum Dei populum.

§ 1. In order to safeguard the integrity of faith and morals, pastors of the Church have the duty and the right to ensure that in writings or in the use of the means of social communication there should be no ill effect on the faith and morals of Christ's faithful. They also have the duty and the right to demand that where writings of Christ's faithful touch upon matters of faith and morals, these be submitted to their judgement. Moreover, they have the duty and the right to condemn writings which harm true faith or good morals.

§ 2. For Christ's faithful entrusted to their care, the duty and the right mentioned in § 1 belong to the Bishops, both as individuals and in particular councils or Bishops' Conferences; for the whole people of God, they belong to the supreme authority in the Church.

SOURCES: § 1: c. 1384 § 1; *SCCong* Let., 14 iun. 1938; SCHO Instr. *Cum in pravis*, 17 apr. 1943 (*AAS* 35 [1943] 144–145); PIUS pp. XII, Enc. *Humani generis*, 12 aug. 1950 (*AAS* 42 [1950] 561–578, 577–578); SCHO Monitum, 28 feb. 1962; SCDF *Notif.*, 14 iun. 1966 (*AAS* 58 [1966] 455); SCDF Decr. *Post editam*, 15 nov. 1966 (*AAS* 58 [1966] 1186); SNB Instr. *Documentum quod*, 28 aug. 1968, in fine (*AAS* 60 [1968] 692–704); *DPMB* 73; *EP* prooemium

§ 2: SCHO Monitum, 15 mar. 1923 (*AAS* 15 [1923] 152); SCHO Instr. *Cum in pravis*, 17 apr. 1943 (*AAS* 35 [1943] 144–145); PIUS pp. XII, Enc. *Humani generis*, 12 aug. 1950 (*AAS* 42 [1950] 561–578, 577–578); SCDF Instr. *Litteris apostolicis*, 23 feb. 1967; *DPMB* 73; *EP* prooemium

CROSS REFERENCES: cc. 205, 209 § 1, 386 § 2, 392, 749–754

COMMENTARY

Carlos J. Errázuriz

1. *Juridico-canonical protection of faith and morals in the area of social communication*

Following c. 822, which opens the panorama of the relationship between the Church and instruments of social communication in its entirety, this canon—which quite closely follows a passage on the presentation of the reasons for *Ecclesiae Pastorum*—introduces and gives the meaning of the discipline continued in the rest of the title of which it is a part: safeguarding the integrity of the truths of faith and morals. This gives rise to a series of specific functions (rights-duties) of the hierarchy by virtue of their proper service and power. However, it should not be forgotten that the responsibility—which is also juridical—for the good of the faith (and of its consequences in practicing it: morals, according to the traditional two words *fides et mores*) is also incumbent upon all the baptized (cf. introduction to tit. IV, no. 3).

The activity of safeguarding the doctrine of the faith has been the subject of more or less radical criticism within the Church itself. This criticism objects to any "repressive" action as contrary to the legitimate freedom of the faithful, particularly of theologians. In this way, an attempt is made to interpret the norms of the following canons in the most restrictive manner possible, invoking the hermeneutic principle of c. 18, under which the laws limiting the free exercise of rights should be interpreted strictly.[1] Although this may be true with respect to the strict obligation to submit writings for the approval of the ecclesiastical authority prior to publication (which is considerably reduced in current legislation), it is no less true that prior review is intended to be a service to the author and to the entire ecclesial community[2] insofar as safeguarding the word of God in the Church is concerned. It is therefore understood that the author has a right to receive a reply when he requests approval or permission (which is stated in the CDF Instruction "On Some Aspects Related to the Use of Instruments of Social Communications in Promoting the Doctrine of the Faith,"[3] no. 10 § 1); and that c. 827 § 3 contains a recommendation that authoritative prior judgment is to be requested for all writing "containing anything that peculiarly affects religion or the integrity of morals."

1. Cf. J.A. CORIDEN, "The Teaching Office of the Church," in J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHIEL, *The Code of Canon Law. A Text and Commentary* (New York 1985), pp. 578–586.
2. Regarding this logic of service, cf. L. DE ECHEVERRÍA, "La vigilancia episcopal sobre la publicación de libros," in *Revista Española de Derecho Canónico* 31 (1975), pp. 353–356.
3. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27

Beyond these provisions, the positive, truly pastoral and promotional sense of these juridical measures safeguarding the faith should be pointed out. From this point of view, the CDF Instruction mentioned above, which, by its nature, is not intended to, nor can it, modify Codal norms (cf. c. 34), contains a basic proposition that transcends the recurring tension in this area between the juridical and the pastoral. The very title of the Instructionwhich speaks of "promoting the doctrine of the faith" is significant. But this section in the introduction is even more significant: "The canonical norms are a guarantee of everyone's freedom, both for the faithful in particular and for pastoral agents, theologians and all Catholic reporters, who have a right to express their opinion, provided they always safeguard the integrity of the faith and morals and give due respect to the Pastors. Further, laws regulating news guarantee and promote the right of all users of the means of social communications to accurate news and of reporters in general to report their thinking within the limits of professional ethics, including matters related to the way in which religious subjects are treated."

In this area, one cannot yield to the impression that only the virtually unlimited rights of authors and editors exist. This proposition makes no sense in civil society, either. The rights of readers and other users of the means of social communication presuppose inherent limits on the rights of persons conveying a message. Concretely, it is inconceivable of a "right" in the Church to hinder the only Gospel of Christ entrusted to the whole Church and in a particular way to the ministry of those succeeding the Apostolic College.

Obviously, this is not to exalt juridico-canonical methods as if they were the only remedy for the crisis in faith and morals. There are other higher-priority resources: above all, the very apostolic and pastoral vitality of the entire Church, especially insofar as its impact on culture is concerned and from the pastors' point of view, on-going contact and dialog with the world of culture and theology (cf. Instr. cit., no. 3). But the prudent use of canonical instruments for safeguarding the purity of the faith—including even canonical penalties when necessary—is certainly a very important aspect of the governance provided by the Church, which is a true right of all the faithful (of the entire Church): the "right the faithful have to be guided along the path of correct doctrine" (cf. ibid., no. 2). Naturally, in applying these juridical measures one should always proceed with a sense of deep respect and encouragement of legitimate freedom of expression in the Church (e.g., c. 830 contains important specifics on protecting the rights of authors when applying discipline to the review of their writings).

2. *Rights-duties of the Hierarchy in this area*

Paragraph 1 lists three duties that are also rights of the hierarchy. First, the duty of doctrinal and moral vigilance, which is the basis for the next two, which are means for putting this vigilance into practice: the right-duty to demand prior review of writings related to faith or morals (a subject addressed by cc. 824–832); and the right-duty of reproving writings that are harmful to the rectitude of the faith or good morals. Paragraph 2, on the other hand, specifies who is competent to decide these juridical situations.

In addition to the generic right-duty of vigilance (which raises no particular problems), the extent to which concrete rights-duties to demand prior review and reprove writings are incumbent upon bishops (diocesan bishops and their equivalents), particular councils, bishops' conferences and the supreme authority should be specified. Of course, all these attributions apply to the supreme authority by virtue of the breadth of his power, although he may customarily exercise these attributions through the CDF. This dicastery is competent to demand that the norms on the review of publications be reviewed by the competent authority (which, however, is not the same Congregation, since prior review of writings by the Apostolic See is not currently required) and to examine writings and opinions that seem to be dangerous and contrary to the correct faith, and, having given the authors of these writings and opinions a chance to explain their thinking fully, to reprove them promptly if they are contrary to the Church's doctrine (*PB* 52, 1°–2°). This review and possible reprobation are carried out by the same congregation, in accordance with the norm mentioned earlier (cf. introduction to title IV, no. 2) which was specially written to sanction the principle that the authors should be heard.

To determine juridically the persons who are competent to do prior reviews, the following canons should be consulted, which state that the local ordinary is normally competent, except in special cases where the bishops' conferences are specifically competent (cf., e.g., c. 825). As a general rule, then, a bishops' conference is not the forum for review. It would be incumbent upon particular councils, by virtue of their very nature (cf. c. 445), to issue possible laws on the subject, but not to be a channel for review.

Insofar as the reprobation of already published writings is concerned (except for instances of intervention by a particular council), although the text can be understood to ascribe competence to reprove to bishops' conferences as such, I think it refers rather to the assistance that conference bodies, especially the doctrinal commissions, can provide to diocesan bishops in this delicate and important function. Further, those conferences (such as the German and Dutch conferences) that have formalized a

certain procedure for examining teachings have provided that the respective bishops remain competent and responsible.[4]

As regards the pastors' responsibility for this matter, one should take into consideration part I of the CDF Instruction mentioned above, where the particular responsibility of the diocesan bishops, among other things, stands out. These bishops, "in the context of their own diocese and competence, are promptly but prudently to exercise their right-duty to be vigilant over faith and morals, since as Pastors, they are the main persons responsible for sound doctrine" (no. 4). Of course, it is provided that they should consult when necessary with their bishops' conference, particular councils or the Holy See itself, especially the CDF, with which they are advised to maintain customary contact, including positive suggestions—(cf. nos. 4 and 6). At the same time, the assistance of the doctrinal commissions of both dioceses and bishops' conferences (cf. no. 5 § 1) is stressed, as well as collaboration with "persons and institutions such as seminaries, universities and ecclesiastical faculties, which, being faithful to Church teachings and having the necessary academic competence, may assist the Pastors to meet their obligations" (no. 5 § 2). However, the diocesan bishops' responsibility for divine law in this area is non-transferable and must be considered a priority aspect of their pastoral mission: doctrinal and moral faithfulness—a condition for the authentic deeper understanding of revealed mysteries—is a foundation for and a necessary component of evangelization.

3. *Audiovisual media*

Finally, it should not be overlooked that in our day audiovisual media are becoming increasingly important in shaping culture and social life. The sacred pastors must therefore ensure that the faithful do not lack for proper moral and doctrinal guidance on the use of these media, through which a negative influence is often received.[5] Moreover, as is often the case with books also, the services, both official and private, of moral approval of movies, television programs and "videos" continue to be useful. Of course, such services do not claim to replace upright, prudent judgment in these matters, but they do help shape judgment and are to be included among the Church's positive appreciation of means of communication insofar as they are put at the service of good and truth.[6] The parents' responsibility in this area is particularly important (cf. *IM* 10). The hierarchy's public statements on the compatibility of certain programs

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4. Cf. H. HEINEMANN, "Schutz der Glaubens- und Sittenlehre," in J. LISTL-H. MÜLLER-H. SCHMITZ (eds.), *Handbuch der katholichen Kirchenrechts* (Regensburg 1983), § 66, pp. 576–578.

5. Cf. PCSC, *Pornography and violence in the means of communication: a pastoral response*, May 7, 1989, Italian translation in *EV*, vol. XI (Bologna 1991), nos. 2237–2270.

with faith or morals may also be efficacious, if logically made with sensitivity for timing and in a manner that is appropriate for each situation, especially so as not to exaggerate the importance of or give further publicity to a given program. In addition, it may be advisable for particular law to demand prior review of audiovisual material in some cases, when the material is intended for catechesis or teaching religion, for example, or when it may be used in pastoral care or Catholic-inspired educational initiatives (cf. the introduction to this tit. IV, no. 1).

6. Cf. *IM*, especially nos. 1–2, 24; PIUS XI, Enc. *Vigilanti curae*, June 29, 1936, in *AAS* 28 (1936), pp. 249–263; PIUS XII, Enc. *Miranda prorsus*, September 8, 1957, in *AAS* 49 (1957), pp. 765–805.

824 **§ 1. Nisi aliud statuatur, loci Ordinarius, cuius licentia aut approbatio ad libros edendos iuxta canones huius tituli est petenda, est loci Ordinarius proprius auctoris aut Ordinarius loci in quo libri publici iuris fient.**

§ 2. Quae in canonibus huius tituli statuuntur de libris, quibuslibet scriptis divulgationi publicae destinatis applicanda sunt, nisi aliud constet.

§ 1. Unless it is otherwise provided, the local Ordinary whose permission or approval for publishing a book is to be sought according to the canons of this title, is the author's proper local Ordinary, or the local Ordinary in which the book is published.

§ 2. Unless it is established otherwise, what is said in the canons of this title about books, applies also to any writings intended for publication.

SOURCES: § 1: c. 1385 § 2; *EP* 1,1°
§ 2: c. 1384 § 2; SCHO Monitum, 1 mar. 1962; *EP* 1,2°

CROSS REFERENCES: c. 65 § 1

COMMENTARY

Carlos J. Errázuriz

Beginning with this canon, various aspects of the current discipline on prior review of writings intended for public dissemination are set forth.

1. *Competent ecclesiastical authority*

Thus § 1 specifies the competent ecclesiastical authority for this review: the author's proper local ordinary—of the author's domicile or quasi-domicile (cf. c. 107) or some other local ordinary with whom the author is personally linked by other circumstances, such as rite or some similar reason (cf. c. 372 § 2); and the local ordinary where the books are published, i.e., where the publisher is located. However, the local ordinary of publication (also mentioned in c. 1385 § 2 *CIC*/1917) has been deleted (as is the case in *EP* 1 § 1), probably because this has become a quite incidental consideration that does not seem important enough now to justify granting him competence. Since the physical process of producing a book can be done at various locations, the important thing is really the location of the publisher.

Unlike its precedents in the *CIC*/1917 and *Ecclesiae Pastorum* mentioned above, the text does not specify what is to be done in a case in which the competent local ordinary has denied approval or a license and one wishes to appeal to another, obviously competent, ordinary to resubmit the request. However, the general norm set forth in c. 65 § 1 must be applied, according to which prior denial must be noted in such cases, and the second ordinary must not grant the request without first hearing an explanation from the ordinary who denies it.[1] The applicability of this norm was explicitly upheld by the office of the secretary of the Code Commission in reply to a suggestion that an explicit reference to it be reinstated in the canon.[2] Although this applicability has been questioned by a certain author on the grounds of a strict interpretation of the term "favor" used in c. 65[3] (which perhaps does not give sufficient consideration to the requirements for communion underlying this norm, which requirements, in my opinion, justify a broad interpretation of this word), it has been explicitly reaffirmed by the CDF Instruction "On Certain Aspects related to the Use of Instruments of Social Communication to Promote the Doctrine of the Faith."[4] Of course, the requirements set forth in c. 65 must only be understood *ad liceitatem* (cf. c. 10).

2. *Distinction between "approval" and "license"*

Another matter of a general nature that is inferred in this canon is one related to the distinction between "approval" and "license." I think that in the case of *CIC*, a principle similar to that sanctioned in c. 661 of the *CCEO* may be applied, according to which an ecclesiastical license means that a work is free of error insofar as the Catholic faith or morals are concerned, whereas approval implies acceptance of the work by the Church or a statement of conformance with authentic Church doctrine (which must be understood in a broader sense than mere freedom from error) (the *CCEO* provides a third category: recommended or blessed, in which case there is perfect conformance and the work is therefore recommended by the hierarchy).[5] However, at times the *CIC* text seems to use both terms as if they were synonymous (cf., e.g., cc. 827 § 4, 830 § 1).[6]

1. Cf. e.g. J.M. GONZÁLEZ DEL VALLE, commentary on c. 824, in *Pamplona Com.*
2. Cf. *Comm.* 15 (1983), pp. 106–107.
3. Cf. J.A. CORIDEN, "The Teaching Office of the Church," in J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHIEL, *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 580.
4. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27, no. 11 § 2.
5. So observes J.M. GONZÁLEZ DEL VALLE, commentary on *Liber* III, tit. IV, in *Pamplona Com*; L. CHIAPPETTA, *Il Codice di Diritto Canonico. Commento giuridico-pastorale*, vol. I (Naples 1988), no. 3062, p. 901; p. VALDRINI, in *Droit Canonique* (Paris 1989), no. 380, p. 290, note. 2.
6. As noted by M. CALVI, "Commenti alle delibere CEI: La normativa circa gli strumenti della comunicazione sociale," in *Quaderni di Diritto Ecclesiale* 4 (1991), pp. 192–193.

In any case, as the CDF Instruction mentioned above emphasizes, in cases where an approval or license is mandatory, they not only "ensure that the writing contains nothing contrary to the authentic Magisterium of the Church on faith and morals"—which is true in the case of a simple license in instances where a license is recommended (cf. c. 827 § 3)—but also that it "attests that all the prescriptions of related canonical law have been observed. It is therefore advisable that an approval or license explicitly mention said related canon" (no. 7 § 2; for these prescriptions, Cf. commentaries on the following canons).

3. *The concept of "book" in this title*

Paragraph 2 contains an interpretative norm on the concept of "book" as used in canons in title IV. The principle that has been adopted has to do with the purpose of a work to be disseminated publicly. Therefore, for these purposes, neither the size of the publication nor the medium of reproduction used is of importance. By this principle, writings for private use or limited circulation (such as, e.g., a professor's notes intended for his own students only) are excluded.[7] Obviously, prior review is not applicable to daily publications or those that are printed so quickly that prior review is not physically feasible. In these cases, any statements or corrections by the ecclesiastical authority must be done *a posteriori*, which may be especially necessary in the case of the press officially related to the Church.

According to a certain author, the norms given in this title could be applicable by analogy to sound recordings or visual materials.[8] However, I believe that particular law should be applied to make such an extension by analogy juridically binding.

7. Cf. J.A. CORIDEN, "The Teaching Office...," cit., p. 580.
8. Cf. L. CHIAPPETTA, *Il Codice di Diritto Canonico...*, vol. I, cit., no. 3063, p. 901.

825 **§ 1. Libri sacrarum Scripturarum edi non possunt nisi ab Apostolica Sede aut ab Episcoporum conferentia approbati sint; itemque ut eorundem versiones in linguam vernaculam edi possint, requiritur ut ab eadem auctoritate sint approbatae atque insimul necessariis et sufficientibus explicationibus sint instructae.**

§ 2. Versiones sacrarum Scripturarum convenientibus explicationibus instructas, communi etiam cum fratribus seiunctis opera, parare atque edere possunt christifideles catholici de licentia Episcoporum conferentiae.

§ 1. Books of the sacred Scriptures may not be published unless they are approved by the Apostolic See or the Bishops' Conference. The publication of translations of the sacred Scriptures requires the approval of the same authority, and they must have necessary and sufficient explanatory notes.

§ 2. With the permission of the Bishops' Conference, catholic members of Christ's faithful, in cooperation with separated brethren, may prepare and publish versions of the Scriptures, with appropriate explanatory notes.

SOURCES: § 1: cc. 1385 § 1,1°, 1391; CodCom Resp., 20 maii 1923, VIII (*AAS* 16 [1924] 115); COMMISSIO BIBLICA, Resp., 22 aug. 1943 (*AAS* 35 [1943] 270–271); *DV* 22, 25; *EP* 2,1°
§ 2: *DV* 22; *EP* 2,2°

CROSS REFERENCES: cc. 826, 838

COMMENTARY

Carlos J. Errázuriz

1. *The books of Sacred Scripture*

The Church's pastoral care in the area of books is naturally at its greatest with respect to the Sacred Scriptures. It is necessary to make the written word of God, as accessible to all people as possible through satisfactory translations into every living language (cf. *DV* 25). Logically, these translations must have guarantees of faithfulness to the sacred text (the entirety of the canon of inspired books, faithfulness of translations to the original texts: cf. *DV* 22) and provide a satisfactory understanding of the

Bible as inseparable from sacred tradition and the living Magisterium of the Church (cf. *DV* 7–10).

The norm set forth in this canon is inspired by these principles. With respect to both approval of Catholic editions of the Scriptures and a license for ecumenical editions, the *CIC* opted to reserve competence to the Apostolic See and bishops' conferences, unlike *Ecclesiae Pastorum* 2 § 1, which assigned competence in both cases to the local ordinary. This centralization can favor the particular care with which these issues, for the good of the Church, must be undertaken to ensure that there are faithful, worthy, literarily attractive and pastorally satisfactory versions in every language. Especially by preparing texts for liturgical use (which is subject to the norms set forth in c. 838, to which reference is made in c. 826 § 1), it will be possible to work toward a timely common version that will contribute to emphasizing the unity of the Scriptures as the Church's common patrimony.

For the publication of translations into the vernacular languages, the *CIC* continues the traditional requirement that they be printed with appropriate explanatory notes: "thus the children of the Church can familiarize themselves safely and profitably with the sacred Scriptures, and become steeped in their spirit" (*DV* 25). This is a form of safeguarding the truly ecclesial reading of the Bible that should not fall into a formalistic requirement. Beyond this precept, the versions with the most extensive annotations or commentaries are highly recommended. According to the general rule set forth in c. 824, the local ordinary is competent with respect to commentaries that go beyond the function of explanatory notes.

2. *Ecumenical versions of the Sacred Scriptures*

The Second Vatican Council mentioned translations prepared by the Catholic faithful in collaboration with the separated brethren (the so-called ecumenical versions) as an opportunity, if advisable and with the consent of the ecclesiastical authority, that would encourage the use of these translations by all Christians (cf. *DV* 22). The ecumenical importance of this objective is evident, since "The sacred Word is a precious instrument in the mighty hand of God for attaining to that unity which the Saviour holds out to all people" (*UR* 21). The Secretariat (now the Pontifical Council) for Christian unity, together with the bible societies supported by the separated Protestant brethren, published as far back as 1968 the first document with technical and procedural directives for jointly preparing these versions.[1] A more precise and complete edition appeared in 1987.[2]

1. SPCU, *Guidelines for interconfessional cooperation in translating the Bible*, June 2, 1968; for the original English text, with Italian translation, see *EV*, *Supplementum 1* (Bologna 1990), nos. 208–230.
2. November 16, 1987; the original English text and Italian translation can be found in *EV*, vol. X (Bologna 1989), nos. 2266–2319.

The canon requires that these translations also be printed "with appropriate explanatory notes." Given the pastoral purpose of these notes, they cannot be limited to technical matters, but must discuss doctrinal matters, giving the Catholic interpretation of the Bible. By safeguarding, to the extent possible, a common translation done with the separated brethren, this requirement for explanatory notes will lead to the publication of a specifically Catholic edition of the agreed text, which, by naturally emphasizing its ecumenical nature, will contain the integrated content necessary for use by the Catholic faithful. This diversity of editions of the same text is explicitly mentioned in the joint document mentioned above.[3]

3. Cf. ibid., no. 2.7, nos. *2316–2318*.

826 **§ 1. Ad libros liturgicos quod attinet, serventur praescripta can. 838.**

§ 2. Ut iterum edantur libri liturgici necnon eorum versiones in linguam vernaculam eorumve partes, constare debet de concordantia cum editione approbata ex attestatione Ordinarii loci in quo publici iuris fiunt.

§ 3. Libri precum pro publico vel privato fidelium usu ne edantur nisi de licentia loci Ordinarii.

§ 1. For liturgical books, the provisions of Can. 838 are to be observed.

§ 2. To republish liturgical books or to publish translations of all or part of them, it must be established, by an attestation of the local Ordinary in which they are published, that they accord with an approved edition.

§ 3. Prayer books, for either the public or the private use of the faithful, are not to be published except by permission of the local Ordinary.

SOURCES: § 1: c. 1257; *SC* 22 § 2, 36, 39, 40; *IOe* 21, 40; *OE* 5; *UR* 15; CONSILIUM AD EXSEQUENDAM CONSTITUTIONEM DE SACRA LITURGIA Litt. circ., 30 iun. 1965; *AG* 22; *GS* 58; *SCDW* Resp., 11 iun. 1970; *EP* 3; SCSDW Let., 5 iun. 1976
§ 2: c. 1390; SCRit Decr. *Cum, nostra aetate*, 27 ian. 1966, 9 (*AAS* 58 [1966] 170); CONSILIUM AD EXSEQUENDAM CONSTITUTIONEM DE SACRA LITURGIA Let. circ., 21 iun. 1967, 6; *SCDW* Instr. *Liturgicae instaurationes*, 15 sep. 1970, 11 (*AAS* 62 [1970] 702–703); SCDF Decl., 25 ian. 1974 (*AAS* 66 [1974] 661); *EP* 3,2°
§ 3: c. 1385 § 1,2°; SCHO Decr. *Supremae huic*, 17 apr. 1942 (*AAS* 34 [1942] 149); *EP* 3,3°

CROSS REFERENCES: § 1: cc. 276 § 2,3°; 838; 846 § 1; 850; 880 § 1; 928; 1000 § 1; 1009 § 2; 1119
§ 2: c. 839

COMMENTARY

Carlos J. Errázuriz

1. *Liturgical books*

The first two paragraphs of the canon have to do with the publication of liturgical books. Because of their importance for the liturgy itself

and therefore for the faith and the life of the Church, they are also the subject of quite particular care. In this discipline, it is helpful to distinguish among various aspects:

a) The approval of liturgical texts and translations thereof in so-called "typicae" (original) editions: This involves the exclusive competence of the ecclesiastical authority—competencies in this matter currently belong to the Apostolic See in the Latin Church (the only entity involved in Latin texts) and to bishops' conferences (to which translations into vernacular languages are entrusted subsequent to review by the Apostolic See) according to c. 838, to which this canon refers (cf. commentary). The competent dicastery is the *CDWDS* (cf. *PB* 64);

b) Authorization to reproduce approved texts in so-called "iuxta typicas" *editions (in accord with the original)*, which in turn implies a two-part question:

— the use of the text, considered for these purposes as a work covered by an intellectual property right held by the same ecclesiastical authority that approves them. This authority must give its authorization for the text to be reproduced, subject to whatever conditions are deemed advisable. According to the SCRit Decree *Cum nostra aetate*,[1] the Apostolic See is responsible for Latin texts, which involves the current *CDWDS for licensing* , and the Administration of the Patrimony of the Apostolic See insofar as economic matters are concerned. On the other hand, the bishops' conferences are responsible for texts in the vernacular languages (texts containing the vernacular language alone as well as those including Latin), without prejudice to the issues of intellectual property rights to the Latin text, which belong to the Administration mentioned above;

— conformance of the text with the approved edition, for which the local ordinary is responsible where the "iuxta typicam" edition is published (cf. § 2 of this canon). *De iure condendo*, I think that Latin law would be interested in adopting the solution seen in c. 657 § 3 *CCEO,* under which the official original text that is in accord is sufficient, and for these purposes, the economic claim to the intellectual property rights of the master texts is deleted.

2. *Prayer books*

The ecclesial importance of prayer (emphasized anew by the expansion and depth of the part dedicated to prayer by the CCC: cf. part IV) is the basis for the norm set forth in § 3, which echoes the consistent concern of the Apostolic See not only for the doctrinal and moral uprightness of prayer books (and any other devotional writing: pamphlets, holy

1. September 29, 1966, in *AAS* 58 (1966), pp. 169–171.

pictures, etc.), but also for their appropriateness for genuine Christian devotion within the broad freedom enjoyed by the faithful in matters of spiritual life (cf. c. 214).[2] Of course, this relates to non-liturgical prayer books, although (unlike the parallel *EP* 3 § 3) prayer books for public use by the faithful are also mentioned now. I think that this public aspect is not to be understood in the strict sense of public worship (which is essential in liturgy: cf. c. 834 § 1), but must rather refer to religious practices that, by legitimate custom or intervention of the ecclesiastical authority, have become part of the common heritage of the popular religious expression of a given Christian community (cf. *SC* 12–13).

2. Cf. e.g. SCHO, Decr. of May 26, 1937, in AAS 29 (1937), pp. 304ff and Decr. of April 17, 1942, in AAS 34 (1942), p. 149.

827 **§ 1. Catechismi necnon alia scripta ad institutionem catecheticam pertinentia eorumve versiones, ut edantur, approbatione egent loci Ordinarii, firmo praescripto can. 775 § 2.**

§ 2. Nisi cum approbatione competentis auctoritatis ecclesiasticae editi sint aut ab ea postea approbati, in scholis, sive elementariis sive mediis sive superioribus, uti textus, quibus institutio nititur, adhiberi non possunt libri qui quaestiones recipiunt ad sacram Scripturam, ad theologiam, ius canonicum, historiam ecclesiasticam, et ad religiosas aut morales disciplinas pertinentes.

§ 3. Commendatur ut libri materias de quibus in § 2 tractantes, licet non adhibeantur uti textus in institutione tradenda, itemque scripta in quibus aliquid habetur quod religionis aut morum honestatis peculiariter intersit, iudicio subiciantur loci Ordinarii.

§ 4. In ecclesiis oratoriisve exponi, vendi aut dari non possunt libri vel alia scripta de quaestionibus religionis aut morum tractantia, nisi cum licentia competentis auctoritatis ecclesiasticae edita sint aut ab ea postea approbata.

§ 1. Without prejudice to the provisions of can. 775 § 2, the publication of catechisms and other writings pertaining to catechetical formation, as well as their translations, requires the approval of the local Ordinary.

§ 2. Books dealing with matters concerning sacred Scripture, theology, canon law, church history, or religious or moral subjects may not be used as textbooks on which the instruction is based, in elementary, intermediate or higher schools, unless they were published with the approbation of the competent ecclesiastical authority or were subsequently approved by that authority.

§ 3. It is recommended that books dealing with the subjects mentioned in § 2, even though not used as textbooks, and any writing in which there is anything of special concern to religion or good morals, be submitted to the judgement of the local Ordinary.

§ 4. Books or other written material dealing with religion or morals may not be displayed, sold or given away in churches or oratories, unless they were published with the permission of the competent ecclesiastical authority or were subsequently approved by that authority.

SOURCES: § 1: c. 1385 § 1,2°; *GCD* 134; *EP* 4,1°; SCDF Resp., 25 iun. 1980, I (*AAS* 72 [1980] 756)
§ 2: c. 1385 § 1,2°; *EP* 4,2°
§ 3: c. 1385 § 1,2°; *EP* 5,1°; SCDF Resp., 25 iun. 1980, II (*AAS* 72 [1980] 756)
§ 4: *EP* 4,4°

CROSS REFERENCES: § 1: cc. 775, 779
§ 2: cc. 804, 810 § 2
§ 3: c. 823
§ 4: cc. 1210, 1213

COMMENTARY

Carlos J. Errázuriz

1. *Catechisms and other catechetical writings*

Writings having to do with catechesis are also the object of particular attention in canonical norms. The Code clearly distinguishes two categories of catechetical writings: official writings, i.e., those adopted as official texts (which are therefore obligatory in public catechesis) by the competent ecclesiastical authority (which are regulated at the level of dioceses and bishops' conferences by c. 775, and whose most universal expression is currently the CCC); and non-official writings, with which this canon is concerned. The private nature of these unofficial writings implies that they are not published or recognized by the Church as an institution, but are the responsibility of the authors and publishers.

However, given the public importance of catechesis in the life of the Church, these unofficial catechetical writings need approval by the local ordinary (unlike in the Decr. *EP* 4 § 1, the bishops' conferences are not mentioned here). This approval not only ensures freedom from doctrinal or moral error, but also attests that the universal norms on catechesis have been met, which was made clear in a reply by the SCDF having to do with *Ecclesiae Pastorum*, but which took into account the new Code that had already been promulgated.[1] This modification of the universal norm is realized today principally in true fundamental harmony with the the *CIC*, besides the Letter *Catechesi Tradendae* and the *Directorium generale pro catechesi* of August 25, 1997. The CCC constitutes a "sure and authentic text of reference for teaching Catholic doctrine, and very particularly for formulating local catechisms." Without replacing catechisms that have

1. Cf. Reply of July 7, 1983, in *AAS* 75 (1984), pp. 48–52.

already been approved, it encourages and facilitates writing new ones "that take diverse situations and cultures into account, but carefully safeguard the unity of the faith and faithfulness to Catholic doctrine."[2] As far as a particular diocesan norm on catechesis is concerned (cf. c. 775 § 1), the SCDF reply mentioned above only has to do with official catechisms.

2. *Books regarding subjects related to faith and morals*

As a specific example of the right of vigilance that is incumbent upon the ecclesiastical authority with respect to Catholic religious education (cf. cc. 804 § 1, 810 § 2), this precept demands that textbooks for instruction that discuss the matters mentioned (which may be grouped under the final phrase "religious or moral subjects") must be approved by the competent ecclesiastical authority. This has to do with textbooks, i.e., books on which instruction is based (it does not concern supporting materials, which fall under the recommendation given in § 3). Given the broadness of the canon, it is to be understood that it encompasses instruction in these subjects at all levels, including the university level, and that it applies to any kind of institution providing such instruction: schools and universities, whether or not they are Catholic in the canonical sense; centers of ecclesiastical studies: ecclesiastical universities, seminaries, scholasticates etc. I think that of course, the requirement for approval makes sense to the extent that the instruction is presented as Catholic. Outside this context, it might be advisable that certain texts (e.g., on ethics) written by Catholics with thoroughly correct doctrine not require ecclesiastical approval or that said approval need not appear in the publication itself (cf. commentary on c. 830, *in fine*), so as to avoid prejudice on the part of non-Catholics that could lessen the apostolic efficacy of such books.

By its very nature, this approval will entail not only recognition of orthodoxy, but also assurance that a publication is at least satisfactory for its specific teaching purpose. Approval in itself does not signify giving a text official status, although it may if the book is intended for certain purposes (e.g., use in Catholic schools). The possibility is mentioned of *a posteriori* approval of books that have already been published.

The text does not specify which ecclesiastical authority is competent to give approval. Thus, the general rule set forth in c. 824 § 1 applies. However, in cases in which textbooks are specifically intended for certain educational institutions, the judgment of the ecclesiastical authority exercising doctrinal and moral vigilance over said institutions should be taken into account. Thus, in the case of textbooks intended to teach religion in public schools in a given country, provision is usually made for

2. Cf. CCE, Ap. Const. *Fidei Depositum*, no. 4.

intervention by the respective bishops' conference (rather than the local ordinary) in accordance with agreements with government authorities.[3]

3. *Other books related to religion and good morals*

Following the guidelines given in *Ecclesiae Pastorum* 4 § 3, § 3 of this canon contains the principal innovation of post-conciliar canonical norms on the *imprimatur*: changing the general canonical obligation to obtain the *imprimatur* for all kinds of books with doctrinal or moral content into a recommendation, except in the specific cases mentioned above. The local ordinary's judgment mentioned here is interpreted by the CDF Instruction "On Certain Aspects of the Use of Instruments of Social Communication in Promoting the Doctrine of the Faith"[4] as a license, which "has the meaning of an official statement guaranteeing that the writing contains nothing that is contrary to the integrity of the faith or morals" (n. 8 § 3). Of course, this license does not presume a later approval of the booknor much less give it official or unofficial status.

The current recommendation emphasizes the principal moral and juridical responsibility for the doctrinal and moral integrity of a book falls upon the author and those who collaborate to compose, publish and distribute the book. The author is juridically autonomous in his decision on whether or not to follow the current recommendation (and cannot be sanctioned for not having followed it), but it must not be forgotten that this general recommendation, which is part of the current normative system, exists; therefore, from the moral point of view at least, there must be good reasons for not following it (e.g., those given above for a situation in which the *imprimatur* is not printed in a book in order to promote its acceptance in non-Catholic environments). In any case, the juridico-canonical duty to safeguard the faith and integrity of morals—which correlates with the right of all the members of the Church—demands that the author take satisfactory action to avoid harming ecclesial communion. Aside from using official channels for a license, it is often prudent to avail oneself of private counsel from experts to better assess what one is publishing. This mutual review of writings is a very important aspect of the intellectual community: one that is so important in any field, but even more necessary when fidelity to the word of God is at stake.

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3. Regarding the situation in Spain, cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 827, in *Pamplona Com*; in Italy, cf. *Intesa fra el Ministro della pubblica istruzione e il Presidente della CEI [ConferenzaEpiscopale Italiana] sull'insegnamento della religione cattolica nelle scuole pubbliche*, December 14, 1985, no. 3.2, in *Enchiridion CEI*, vol. 3 (Bologna 1986), no. 2936; and XXVI ASSEMBLEA GENERALE DELLA CEI, Delibera no. 2, September 5, 1986, in *Enchiridion CEI*, vol. 4 (Bologna 1991), no. 313.

4. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27.

This norm must be harmonized with the norm set forth in c. 823 § 1, which states the duty and right of the pastors of the Church to demand that the faithful submit publications of doctrinal and moral importance to the pastors for judgment. The CDF Instruction mentioned above has resolved this apparent contradiction by sanctioning a traditional interpretation,[5] which had also already been given by SCDF with respect to an analogous problem the *Ecclesiae Pastorum* raised.[6] By this interpretation, the diocesan bishop can go beyond the universal law, requiring by singular precept (cf. c. 49) that other writings related to the faith or morals be submitted to him, provided this is done "to safeguard the integrity of the truths of the faith and morals."[7] "This precept can be imposed in particular cases, on individuals as well as categories of persons (clergy, religious, Catholic publishing houses, etc.) or certain subjects."[8] Of course, this presupposes that the duty to demand this prior review should be understood to be limited to those cases contemplated by the universal discipline and any specific prescriptions of particular law, which in my opinion, in addition to the singular precept mechanism (provided by the Instruction), could also adopt the mechanism of a diocesan law (or a law of a particular council or bishops' conference in accordance with the requirements set forth in c. 455).

4. *Books displayed, sold, or given away in sacred places*

A book or writing must have ecclesiastical authorization in order to be placed in a sacred place. This norm is to be understood in light of the particular attention given to such places by virtue of their very nature (cf. cc. 1210 and 1213). These channels for distributing religious books are of importance in certain countries, so this norm will in fact encourage compliance with the recommendation set forth in § 3.[9] With respect to *Ecclesiae Pastorum* 4, 4°, the text has changed approval to license, although at the same time it has added the possibility of later approval, which indicates a certain lack of rigor in the use of the two terms. Although a license is given by the local ordinary proper to the author or publisher (cf. c. 824 § 1), I think the display, selling or giving away of such materials is always subject to the vigilance of the ecclesiastical authority over each sacred space.

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5. Cf. e.g. L. CHIAPPETTA, *Il Codice di Diritto Canonico. Commento giuridico-pastorale*, vol. I (Naples 1988), no. 3056, p. 899.
6. Cf. Reply of June 25, 1980, in *AAS* 72 (1980), p. 756.
7. CDF, Instr. "On Certain Aspects of the Use of Instruments of Social Communication in Promoting the Doctrine of the Faith" March 30, 1992, in *Comm.* 24 (1992), pp. 18–27.
8. Ibid.
9. Noted by L. DE ECHEVERRÍA, commentary on c. 827, in *Salamanca Com.*

828 **Collectiones decretorum aut actorum ab aliqua auctoritate ecclesiastica editas, iterum edere non licet, nisi impetrata prius eiusdem auctoritatis licentia et servatis condicionibus ab eadem praescriptis.**

Collections of decrees or acts published by any ecclesiastical authority may not be republished without first seeking the permission of the same authority and observing the conditions which it lays down.

SOURCES: c. 1389

CROSS REFERENCES: —

COMMENTARY

Carlos J. Errázuriz

Re-publication of collections of acts of ecclesiastical authority

This canon repeats a norm of *CIC*/1917 (cf. c. 1389), which only mentioned acts of the Roman Congregations and which had not been reproposed by *Ecclesiae Pastorum.* It now extends to acts published by any ecclesiastical authority.

This precept follows a logic that is different from moral and doctrinal vigilance (although it may also be related to it) in that it is also intended to guarantee the authenticity of collections of official acts published by the ecclesiastical authority and affirms any copyrights on said collections.

The text mentions "collections" and observing conditions laid down by a given ecclesiastical authority. This leads one to understand that it only applies to official collections that are to be republished as official publications (on occasions the publication of particular acts of a special entity, such as the *CIC* or the CCC, is also regulated similarly by reserving such publication to the ecclesiastical authority). This canon thus does not extend to the unofficial reproduction of acts of the Holy See or other ecclesiastical authorities (or unofficial collections that do not supersede or imitate any official collection), much less historical texts that are no longer current.

829 Approbatio vel licentia alicuius operis edendi pro textu originali valet, non vero pro eiusdem novis editionibus vel translationibus.

Approval of or permission to publish a work is valid for the first edition, but not for new editions or translations of it.

SOURCES: c. 1392 § 1

CROSS REFERENCES: —

COMMENTARY

Carlos J. Errázuriz

New editions or translations

This provision is based on the presumed newness of a new edition (which implies modifications) or a translation, which involves the issue of fidelity to the original text, apart from any specific prudent considerations for a given language (cf. commentary on c. 830, nos. 1 and 3). This is why the CDF Instruction "On Certain Aspects Related to the Use of Instruments of Social Communication in the Promotion of the Doctrine of the Faith" clarifies that, as is traditional, "mere reprints are not considered new editions."[1] Neither are offprints mentioned in c. 1392 § 2 of the *CIC*/1917. As far as the limits are concerned between a mere reprint and a new edition (which are not always clear), I think a flexible interpretation should be given that is appropriate above all to the sense of the norm and takes the type of publication into account. For example, changes made in a liturgical book should not be considered the same as those made in a scientific book.

1. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27, no. 9.

830 **§ 1. Integro manente iure uniuscuiusque loci Ordinarii committendi personis sibi probatis iudicium de libris, ab Episcoporum conferentia confici potest elenchus censorum, scientia, recta doctrina et prudentia praestantium, qui curiis dioecesanis praesto sint, aut constitui etiam potest commissio censorum, quam loci Ordinarii consulere possint.**

§ 2. Censor, in suo obeundo officio, omni personarum acceptatione seposita, prae oculis tantummodo habeat Ecclesiae de fide et moribus doctrinam, uti a magisterio ecclesiastico proponitur.

§ 3. Censor sententiam suam scripto dare debet; quae si faverit, Ordinarius pro suo prudenti iudicio licentiam concedat ut editio fiat, expresso suo nomine necnon tempore ac loco concessae licentiae; quod si eam non concedat, rationes denegationis cum operis scriptore Ordinarius communicet.

§ 1. While every local Ordinary retains his right to submit the judgement of books to persons approved by him, the Bishops' Conference may draw up a list of censors, outstanding for their knowledge, right doctrine and prudence, who will be available to diocesan curias; it may even establish a commission of censors whom the local Ordinaries can consult.

§ 2. In carrying out his or her task, a censor must put aside all preference of persons and look only to the teaching of the Church concerning faith and morals, as declared by its magisterium.

§ 3. The censor must give an opinion in writing. If it is favourable, the Ordinary may, in his prudent judgement, give his permission for the work to be published, adding his own name and the date and place of the permission. If he does not give this permission, the Ordinary must inform the author of the reasons for the refusal.

SOURCES: § 1: c. 1393 § 1; SCHO Decr. *Supremae huic*, 17 apr. 1942 (*AAS* 34 [1942] 149); PIUS pp. XII, Alloc., 13 feb. 1955 (*AAS* 48 [1956] 127–135); *EP* 6,1°
§ 2: c. 1393 § 2; IOANNES pp. XXIII, Alloc., 18 nov. 1959 (*AAS* 51 [1959] 867–868); *EP* 6,2°
§ 3: cc. 1393 § 4, 1394 § 2; *EP* 6,3°

CROSS REFERENCES: § 1: c. 134 § 2
§ 2: cc. 218, 386 § 2, 749–754
§ 3: c. 65 § 1

COMMENTARY

Carlos J. Errázuriz

1. *Role of the censor and ecclesiastical authority in the granting of license or approbation*

The new *CIC* retains the traditional duties of the censor (including the term itself), who institutionalizes a method of collaboration between the expert faithful and the ecclesiastical authority in carrying out the hierarchy's mission of exercising vigilance over doctrine and morals.

A censor's favorable doctrinal judgment is customarily known as "nihil obstat" and must be based exclusively on "the teaching of the Church concerning faith and morals, as declared by its magisterium" (§ 2). This "nihil obstat" does not entail approval of the contents of the writing, but only states that it does not contain anything contrary to the doctrine of the Church. In order to apply this point of reference, the ecclesiastical magisterium is to be consulted: its function is the authentic interpretation of the written or transmitted word of God (cf. *DV* 10). The text does not mention the approved doctors seen in the parallel c. 1393 § 2 *CIC*/1917. In my opinion, this change emphasizes a greater awareness of legitimate freedom in the sacred sciences, which, to be sure, cannot be understood as being contrary to complete fidelity to the magisterium. To these ends, the various levels of the obligatoriness of the magisterium (cf. cc. 749–754) are to be taken into account, avoiding both the instrumentalization of these levels (which are sometimes seen in a rather debatable way) to oppose certain truths (as happened, e.g., with the doctrine of the Encyclical *Humanae vitae*) as well as the literal adherence to contingent or obsolete aspects of certain magisterial declarations (as often happens, e.g., in the social magisterium). When dealing with publications that must meet certain requirements, censors must also logically report on whether they do so or not (e.g., whether a catechism meets the universal norms on catechesis).

The ecclesiastical authority, on the basis of the censor's opinion, grants a license or approbation traditionally called an "imprimatur." Paragraph 3 states that the ordinary shall grant a license "in his prudent judgment." I think that this ordinary, in accordance with the current norm on the licensing or approbation of books, must always be a competent local ordinary or a competent body of a bishops' conference if a bishops' conference is empowered to intervene. Although § 3 only mentions licensing, it seems to me that it also applies, *mutatis mutandis*, to approbation.

In order to interpret properly the prudence with which the ecclesiastical authority is to proceed in granting a license, it should be pointed out that there are two limits on giving opinions in the area of faith and morals

(cf. c. 218): doctrinal fidelity (guaranteed by submission to the magisterium) and prudence, which entails assessing the effects that proper (even perfectly correct) positions may have on ecclesial or civil society. In this sense, the possibility of a conditional license exists as provided for in the CDF Instruction "On Certain Aspects Related to the Use of Instruments of Social Communication in the Promotion of the Doctrine of the Faith": "Whereas," it states, "a writing may contain opinions or matters proper to specialists or relevant to certain circles and may cause scandal or confusion in some circles or persons and not in others, a license may be granted under certain conditions related to the means of publication or language and which, in any case, avoids the dangers mentioned above."[1]

It might be assumed that a censor's duty is strictly doctrinal, whereas the ecclesiastical authority should address the area of prudence. However, this division of duties—which in principle might be satisfactory—cannot be understood simplistically. On one hand, since it is a matter of rendering a final judgment on any possible doctrinal or moral dangers in a publication, the experts cannot help but take prudence into consideration. On the other hand, it should not be forgotten that it is a matter of prudence for the ecclesiastical authority also, from the point of view of the effects of publication on the faith and morals. It does not seem that any other kind of prudent considerations could be grounds for refusing a license or making it conditional. But there could in fact be grounds, in exceptional and very serious cases, for prohibiting a certain publication under a particular precept.[2]

2. *Appointment of and requirements for censors*

The ecclesiastical authority freely chooses persons who are to be given a censor's duties. Persons may be chosen for a specific project or appointed or can be stably named without prejudice to assignments of a specific project at a later date. Canon 1393 § 1 *CIC*/1917 mentions official censors at episcopal curias. *Ecclesiae Pastorum* 6, 1° introduced the option of a list of censors prepared by a bishops' conference to be offered to dioceses. It also provided for the alternative of a censors' commission appointed by a bishops' conference, i.e., a collegial approach to judgment (which obviously could also be instituted by a local ordinary, as deemed necessary). Such a collegiate approach may be especially useful for publications that would have national importance (translations of the Holy Scriptures, national catechisms, religion texts, etc.). These different

1. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27, no. 8 §4. Regarding prudence in this matter, cf. J. HERVADA, commentary on c. 218, in *Pamplona Com.*

2. In this I agree with F.J. URRUTIA, "De limitibus libertatis scribendi fidelium iuxta legem canonicam," in *Periodica* 65 (1976), p. 551.

alternatives have been listed in § 1 of this canon. As was already the case in *Ecclesiae Pastorum*, it is not necessary that censors be clerics; the full eligibility of laypersons who meet the requirements specified is therefore recognized for this duty, which constitutes a specific example of their ability to assist the Church's pastors as experts and advisers, as mentioned in c. 228 § 2.

Censors must be "outstanding for their knowledge, right doctrine and prudence" (§ 1). These three requirements illustrate how delicate and complex the censors' task is.[3] These are three inseparable aspects of the duties of a censor. Above all else, satisfactory scientific competence is necessary. Benedict XIV notes in the second rule on censorship contained in his Apostolic Constitution *Sollicita ac provida*[4] that if a censor asked to render an opinion on a work does not consider himself competent, he is obliged in good conscience to say so and recommend a more competent censor, and he states that doing so will be a credit to his good reputation and be a reason for commending him.[5] Therefore, to the extent possible, the various sacred sciences should be represented on lists of censors.

This competence shall be united to right doctrine, i.e., solid grounding and depth of faith, without which it is altogether impossible to judge the extent to which a writing is or is not in harmony with Catholic doctrine. Finally, true prudence is also needed as a moral and intellectual virtue, particularly to avoid all preference of persons (cf. § 2). It may therefore be advisable to note the prescription made in c. 1393 § 5 *CIC/*1917 ("The censor's name shall never be made known to authors prior to a favorable judgment by said censor") as a way of ensuring an independent judgment by a censor. But prudence is especially needed to find the "sure middle road" mentioned in the earlier c. 1393 § 2, avoiding both rigidly condemning attitudes (e.g., attitudes that do not allow for the proper context of a statement in the setting of a book) and the indiscriminate approval of any stance (under the influence, e.g., of a poorly understood pluralism that relativizes the objectivity of the doctrine of the faith).

3. *Procedure for the granting of license or approval*

This procedure begins with intervention by the censor(s). The ecclesiastical authority is legally obligated to obtain an authorized opinion, which must be in writing. If the opinion is favorable (i.e., if the censor grants his "nihil obstat"), the ecclesiastical authority, exercising his

3. Regarding this task, cf. JOHN XXIII, *Address* of November 18, 1959, in *AAS* 51 (1959), pp. 867–870.
4. July 9, 1753, in p. GASPARRI, *Codicis Iuris Canonici Fontes*, vol. II (Rome 1928), no. 426, pp. 404–422.
5. Cf. ibid., §16, p. 410.

prudent judgment, may grant his license or approbation (cf. *supra*, no. 1 of this commentary), and the permission, which is implicitly presumed to be in writing also (this was stated explicitly in c. 1394 *CIC*/1917), must contain the information mentioned in § 3 of this canon: the name of the ecclesiastical authority granting it and the date and place of permission. The *CIC* does not require a mention in the permission act of the censor's name or opinion, which (except in quite rare and extraordinary circumstances) was required under c. 1393 § 4 *CIC*/1917. Of course, there is no harm in continuing to make mention of it. Further, the CDF Instruction "On Certain Aspects Related to the Use of Instruments of Social Communication in the Promotion of the Doctrine of the Faith"[6] recommends that the permission (and the same could be said of its publication in the book) explicitly mention the canon regulating the type of approval or license that is granted, which helps determine the scope of the act of the ecclesiastical authority (cf. commentary on c. 824, no. 2).

If the opinion is unfavorable for publication, the ecclesiastical authority cannot *ad liceitatem* proceed to grant a license at this point on his own judgment alone, but must request one or more further opinions to support overruling an unfavorable opinion.[7]

Whether the opinion is favorable or unfavorable, the ecclesiastical authority, exercising his prudent judgment, may refuse a license or approval or grant permission under certain conditions, either on the means of publication or language, for prudent reasons (cf. above, no. 1 of this commentary), or by requiring that corrections be made as a *conditio sine qua non* for granting a license (and a review of the corrected text may be required). Section 3 requires the authority to inform the work's author of reasons for refusal. The two clauses in c. 1394 § 2 *CIC*/1917 limiting this information (at the author's request, provided no serious reason requires otherwise) were deleted. The authors' rights justify this change.

In this context, one must take into account no. 10 of the CDF Instruction mentioned above, which states: "§ 1. Since a license constitutes both a juridical and a moral guarantee for authors, publishers and readers, the person who makes a request, either because it is mandatory or because it is only recommended, has the right to a reply from the competent authority. § 2. The greatest diligence and earnestness, taking into account the rights of the authors (cf. c. 218) and all the faithful (cf. cc. 213 and 217), are necessary during the prior review for a license." Of course, the writing must be submitted for consideration for a license with sufficient time, depending on its length and complexity. The three-month period stipulated as a general rule in c. 57 for the presumption of a refusal for the purposes of recourse in the event of administrative silence may be applied in this

6. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27.

7. In this respect I agree with P. VALDRINI, in *Droit Canonique* (Paris 1989), no. 381, p. 292.

context. In any case, additional time may be justified, especially in certain especially difficult cases, and for these reasons it is desirable that relations between the ecclesiastical authority and the author be in an atmosphere of mutual trust and exchange of information with a "constructive spirit of respectful dialog and ecclesial communion that encourages satisfactory communications so that publications will not contain anything contrary to the Church's doctrine" (no. 12 § 3). In such a climate of dialog and collaboration, it should be a matter of sending mere non-binding suggestions to authors on occasions when a license is requested. Logically, these suggestions will not center on points where a clear conflict with Catholic doctrine has been noted, but rather concern issues that could be corrected, clarified or added to improve the work. This approach, used with moderation and sensitive respect for legitimate freedom, can resurrect the *imprimatur* and make it more attractive, emphasizing its function of service to authors and, through these authors, to the entire ecclesial community.

If a license or approbation is refused, in addition to the option of applying to another competent local ordinary according to c. 65 § 2 (cf. commentary on c. 824, no. 1), the CDF Instruction reminds us that "under cc. 1732–1739, administrative recourse to the Congregation for the Doctrine of the Faith is possible, since it is the competent Dicastery in this matter (cf. the Apostolic Constitution *Pastor Bonus*, art. 48)" (no. 10 § 3). The only appeal against a decision by this Congregation would be an administrative recourse to the Apostolic Signature insofar as any *in procedendo* violation of the law is concerned, not with respect to substantive issues of a doctrinal nature. In these cases, given the all-encompassing terms (cf. *PB* 48) in which the CDF's competence is laid down and has been traditionally understood, any further appeal would be to the Roman Pontiff himself.

The license or approval must be printed in books that are published, including also the name of the ecclesiastical authority giving permission and the date and place of permission. This provision, which was explicit in c. 1394 § 1 *CIC*/1917, has been reinstated by way of authentic interpretation.[8] Publishing this information is altogether compatible with the purpose of the license or approbation as part of the Church's doctrinal service to the faithful and ultimately to all readers.[9] Given that c. 827 § 3, is only a recommendation, the alternative of not publishing a license (for prudent reasons, especially reasons related to facilitating a book's circulation in non-Catholic circles) that has in fact been granted is not currently addressed. However, this problem could still arise if a license is mandatory

8. Cf. Reply of CPI, April 20, 1987, published by order of JOHN PAUL II, May 20, 1987, in *AAS* 79 (1987), p. 1249.

9. Cf. the commentary on this reply by E. BAURA, "Il permesso per la pubblicazione di scritti," in *Ius Ecclesiae* 1 (1989), pp. 249–256.

under particular law. In this case, it seems to me that, in addition to making an exception to said particular law (cf. c. 88 on the dispensation from diocesan law), there could also be just and reasonable cause for the dispensation from the universal law on publishing a license. Under c. 87 § 1, this can be granted by a diocesan bishop.

831 § 1. In diariis, libellis aut foliis periodicis quae religionem catholicam aut bonos mores manifesto impetere solent, ne quidpiam conscribant christifideles, nisi iusta et rationabili de causa; clerici autem et institutorum religiosorum sodales, tantummodo de licentia loci Ordinarii.

§ 2. Episcoporum conferentiae est normas statuere de requisitis ut clericis atque sodalibus institutorum religiosorum partem habere liceat in tractandis via radiophonica aut televisifica quaestionibus, quae ad doctrinam catholicam aut mores attineant.

§ 1. Unless there is a just and reasonable cause, no member of Christ's faithful may write in newspapers, pamphlets or periodicals which clearly are accustomed to attack the catholic religion or good morals. Clerics and members of religious institutes may write in them only with the permission of the local Ordinary.

§ 2. It is for the Bishops' Conference to lay down norms determining the requirements for clerics and members of religious institutes to take part in radio and television programmes which concern catholic doctrine or morals.

SOURCES: § 1: c. 1386 § 2; Secr. St. Resp., 3 nov. 1928; *EP* 5,2°

CROSS REFERENCES: § 2: c. 772 § 2

COMMENTARY

Carlos J. Errázuriz

1. *Participation of the faithful in publications which usually attack the Catholic religion or good morals*

The norm laid down in § 1 does not have to do with the contents of a writing, but rather the conduct of the faithful who write—about any subject, even something that has nothing to do with faith or morals—in newspapers, pamphlets or periodicals which usually openly attacks the Catholic religion or good morals. Following the reasoning of *Ecclesiae Pastorum* 5, 2°, but unlike c. 1386 § 2 *CIC*/1917, permission from the local ordinary (logically, the local ordinary over the place of publication) is required only for clerics and members of religious institutes, not for other faithful. The CDF Instruction "On Certain Aspects Related to the Use of

Means of Social Communication in the Promotion of the Doctrine of the Faith" instructs local ordinaries to consider carefully whether it is advisable or not to grant permission and consider the option of granting permission under certain conditions.[1] Persons who are closely linked to the Church as an institution by virtue of their ministry or religious status are to understand this intervention by the ecclesiastical authority as an ecclesial service for discerning the repercussions of their public actions, which is to be followed with a spirit of Christian obedience.

This does not mean that the obligation to obey this norm is now reduced for other faithful. They are precisely the persons who must decide what to do, prudently and making use of helpful advice when necessary, by weighing the two factors at stake: the good that may come from the presence of a Catholic in these publications (especially if their presence may help bring about a gradual change in the publications' orientation) and any scandal that could arise (which, if sufficiently reasonable, should always be avoided).

Although there is no legal norm, this principle is fully applicable to involvement in audiovisual means of communication that take a similar stance.

2. *Participation of clerics and religious in radio or television broadcasts regarding matters of faith and morals*

By virtue of its subject § 2 of this canon is a specific manifestation of c. 772 § 2: prescriptions by a bishops' conference having to do with radio or television broadcasts on matters of Christian doctrine (cf. c. 772 § 2) should cover requirements that must be met in order for clerics or members of religious institutes to take part in said broadcasts (cf. c. 831 § 2, which also mentions broadcasts on matters related to morals, which must also be understood as implicitly included in c. 772 § 2). In fact, some bishops' conferences have issued complementary norms dealing with both these canons jointly.[2]

It seems advisable that norms laid down by bishops' conferences should distinguish between occasional involvement and frequent involvement so that stricter requirements can be demanded (for doctrinal competence and technical training to work in such communications media). Depending on the circumstances, permission may be expressly required from a local ordinary (or religious superior in the case of members of religious institutes), or from one already holding other similar authorization (e.g., the faculty to preach). It may be of interest to distinguish between

1. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27, no. 13.
2. These provisions can be found in J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al CIC* (Milan 1990).

the local level and the national level, the latter requiring the intervention of some body of the bishops' conference.[3] It may also be of interest to distinguish between the various levels of official representation of the Church that may be assigned to each program in order to determine greater or lesser control. However, this should not be assumed that there are levels in the duty of fidelity to the faith in such broadcasts, either for clerics or the religious only or for any of the faithful.

3. Regarding this distinction, cf. Z. DUSZA, *Diritto della Chiesa ai mezzi di comunicazione sociale in Polonia. Situazione e prospettive, pro manuscripto* (Rome 1992), pp. 145–146.

832 **Institutorum religiosorum sodales ut scripta quaestiones religionis morumve tractantia edere possint, licentia quoque egent sui Superioris maioris ad normam constitutionum.**

To publish writings on matters of religion or morals, members of religious institutes require also the permission of their major Superior, in accordance with the constitutions.

SOURCES: c. 1385 § 3

CROSS REFERENCES: c. 666

COMMENTARY

Carlos J. Errázuriz

Permission of the major religious superior

This canon reinstates the general obligatory nature of this specific license for writings by the religious as seen in c. 1386 § 1 *CIC*/1917. Although at that time a license was required for all writings, including secular writings; it had become only a recommendation in *Ecclesiae Pastorum* 5, 1° (unless constitutions imposed an obligation for a license). However, no recommendation similar to *Ecclesiae Pastorum* (to which the obligation imposed under the said canon of the *CIC*/1917 had also been reduced) is reinstated for secular clerics, although the CDF Instruction "On Certain Aspects Related to the Use of Instruments of Social Communication in the Promotion of the Doctrine of the Faith"[1] mentions them as a category of people for whom the recommendation laid down in c. 827 § 3 may become an obligation under particular diocesan law.

Religious consecration, by its very nature, entails its own vocational requirements with respect to the use of means of social communication, whether in a passive role (cf. c. 666) or as an active participants (cf. c. 831 § 2 in addition to the canon we are now commenting on). The requirements for public witnessing by the religious constitute a particular situation with respect to religious obedience in this area. Each religious institute's constitution must spell out the terms of this obligation, but it

1. March 30, 1992, in *Comm.* 24 (1992), pp. 18–27, no. 8 §2.

does not seem that they can eliminate it, as a certain interpretation that is perhaps too literal may lead one to assume.[2]

In part IV of said CDF Instruction, which enumerates the religious superiors' responsibility in this area,[3] no. 17 contains some interesting clarifications. A superior must have a "prior opinion from at least one trusted censor" (§ 1); he "may require that his license be granted before the local Ordinary grants a license and that the publication mention the Superior's license" (§ 2); "a general license may be granted in instances of frequent collaboration in periodical publications" (§ 3); "In this sector also mutual collaboration between local Ordinaries and religious Superiors is particularly important (cf. c. 678 § 3)" (§ 4). These clarifications lead one to assume that even in the case of a license other than one granted by a local ordinary, it is also granted on the basis of doctrine, with particular attention paid to the public importance of writings by the religious.

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2. This last interpretation, with which I disagree, can be found in J.A. CORIDEN, *The Teaching Office of the Church*, in J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHIEL, *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 585.

3. Generales: cf. SCRSI, letter *Accade non di rado*, December 5, 1985, in *Enchiridion Vaticanum, Supplementum 1* (Bologna 1990), nos. 1073–1080.

TITULUS V
De fidei professione

TITLE V
The Profession of Faith

833 **Obligatione emittendi personaliter professionem fidei, secundum formulam a Sede Apostolica probatam, tenetur:**

1° coram praeside eiusve delegato, omnes qui Concilio Oecumenico vel particulari, synodo Episcoporum atque synodo dioecesana intersunt cum voto sive deliberativo sive consultivo; praeses autem coram Concilio aut synodo;

2° promoti ad cardinalitiam dignitatem iuxta sacri Collegii statuta;

3° coram delegato ab Apostolica Sede, omnes promoti ad episcopatum, itemque qui Episcopo dioecesano aequiparantur;

4° coram collegio consultorum, Administrator dioecesanus;

5° coram Episcopo dioecesano eiusve delegato, Vicarii generales et Vicarii episcopales necnon Vicarii iudiciales;

6° coram loci Ordinario eiusve delegato, parochi, rector, magistri theologiae et philosophiae in seminariis, initio suscepti muneris; promovendi ad ordinem diaconatus;

7° coram Magno Cancellario eoque deficiente coram Ordinario loci eorumve delegatis, rector universitatis ecclesiasticae vel catholicae, initio suscepti muneris; coram rectore, si sit sacerdos, vel coram loci Ordinario eorumve delegatis, docentes qui disciplinas ad fidem vel mores pertinentes in quibusvis universitatibus tradunt, initio suscepti muneris;

8° Superiores in institutis religiosis et societatibus vitae apostolicae clericalibus, ad normam constitutionum.

The following are bound to make a profession of faith personally, according to a formula approved by the Apostolic See:

1° in the presence of the president or his delegate: all who, with a deliberative or a consultative vote, take part in an Ecumenical Council, a particular council, the synod of Bishops, or a diocesan synod; in the presence of the council or synod: the president himself;

2° in accordance with the statutes of the sacred College: those promoted to the dignity of Cardinal;

3° in the presence of a delegate of the Apostolic See: all who are promoted to the episcopate, and all those who are equivalent to a diocesan Bishop;

4° in the presence of the college of consultors: the diocesan Administrator;

5° in the presence of the diocesan Bishop or his delegate: Vicars general, episcopal Vicars and judicial Vicars;

6° in the presence of the local Ordinary or his delegate: parish priests; the rector, professors of theology and philosophy in seminaries, at the beginning of their term of office; and those who are to be promoted to the order of diaconate;

7° in the presence of the Chancellor or, in the absence of the Chancellor, the local Ordinary, or the delegates of either: the rector of an ecclesiastical or catholic university, at the beginning of the term of office; in the presence of the rector if he is a priest, or of the local Ordinary or the delegates of either: those who in any universities teach subjects which deal with faith or morals, at the beginning of their term of office;

8° in accordance with the constitutions: Superiors in clerical religious institutes and clerical societies of apostolic life.

SOURCES: c. 1406; CodCom Resp., 25 iul. 1926, III (*AAS* 18 [1926] 393); SCPF Rescr., 12 nov. 1966; SCDF *Formula professionis fidei* (*AAS* 59 [1967] 1058); Secr. St. *Regolamento generale della Curia Romana*, 22 feb. 1968, 12 (*AAS* 60 [1968] 135); *SapChr* 27 § 1; SCCE Ordinationes, 29 apr. 1979, 8, 4° (*AAS* 71 [1979] 500–521)

CROSS REFERENCES: cc. 380, 750–752, 1368, 1371,2°

COMMENTARY

José A. Fuentes

Profession of faith

1. *Divine and ecclesiastical law and the profession of faith*

Before considering the provisions of *ecclesiastical law* contained in this canon, it is necessary to remember that the faithful must profess the faith if, by failure to do so, an implicit denial or abandonment of the faith, an insult to God or scandal could be assumed. This obligation, which was in c. 1325 *CIC*/1917, has no parallel norm in the current Code, but remains in full force by virtue of *divine positive law* (Mt 10:32; Lk 9:26).

In addition to these mandatory cases obliged by divine law, the Church, under certain circumstances, has required and continues to require a profession of faith by means of proclamation and public acceptance by a concrete formula. This is one of the faithful's obligations that is rooted in an ancient tradition and which is now regulated by c. 833. From the origins of the Church, there has been a requirement of the *profession of faith* from those who were about to receive the sacraments of baptism or of orders, and from those desiring to turn from heresy to incorporated in full communion.

2. *Content of the profession of faith and fundamental juridical effect*

The contents of the profession of faith are a few statements that summarize the principal truths of dogma and a few final prescriptions summarizing the submission required by the Magisterium of the Church. The prescriptions that must be used are the ones promulgated by the Holy See or a duly recognized version.[1] The Church, by proclaiming and requiring these prescriptions, makes clear before all the deposit of faith that has

1. CDF, *Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo*, February 25, 1989, in *AAS* 81 (1989), pp. 104–106; *Rescriptum ex Audientia*, made public on September 19, 1989, in *AAS* 81 (1989), p. 1169. *Nota doctrinalis 'Professionis fidei' formulam extremam enucleans*, June 29, 1998, in *AAS* 90 (1998), pp. 544–551; Regarding the *professio fidei*, cf. MP "Ad tuendam fidem," May 19, 1998, in *AAS* 90 (1998), pp. 457–461. Cf. J.A. FUENTES, "Sujeción del fiel en las nuevas fórmulas de la profession of faith y del juramento de fidelidad," in *Ius Canonicum* 30 (1990), pp. 513–145. On the debate during the task of codification over this provision of canon law, cf. *Comm.* 21 (1989), pp. 295–296.

been revealed, and confesses and infallibly declares the saving doctrine of Our Lord Jesus Christ. From the earliest centuries, many different professions of faith have been proclaimed.[2] Their multiplicity reveals all the more how unified they are. Fundamentally, they have been used in the liturgy or as a compendium of the faith of the Church and have been formalized or recognized by the only one who can determine the faith and that can be no one other than the supreme authority.[3]

The fundamental juridical effect of the obligation to profess the faith in certain circumstances is that the *munus docendi* of the Church attains particular public importance so that only those among the faithful who declare that they are currently living, and will continue to live, under the bonds of communion and submission to authority will attain certain positions and duties. Further (and this would be a second aspect of the juridical relationship that is created), a formal instrument exists in which the relationship between the faithful and the magisterium is more clearly set forth and the duties and rights arising from this relationship are made clearer.

3. *Other juridical consequences of the profession of faith*

Upon declaring the concrete formula of the profession of faith indicated by the authority, extremely important moral responsibilities arise for both the faithful and the hierarchy. Together with these consequences, some rights and duties also arise that are dependent upon the requirement for taking a profession of faith and submission to the magisterium, which is included in the latest formula.[4] We shall describe and attempt to define as briefly as possible the juridical relationship that arises, together with

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2. Cf. *Apostles', Nicene, Constantinoplian, Athanasian Creed,* and those of the various *Councils of Toledo*; (DENZINGER-SCHÖNMETZER, *Enchiridion Symbolorum* (Barcelona 1975), nos. 10, 46, 125, 150, 568). The value of the *Athanasian Creed,* regardless of its authorship, rests on its acceptance and use by the Church. More recently, cf. the *Tridentine Creed,* which was not promulgated by the Council of Trent, but by Pius IV, Const. *Iniunctum,* November 13, 1564 (MANSI, *Sacrorum conciliorum nova et amplissima collectio,* v. 33 (Graz 1961), cols. 220–222); the most recent precedent of the current formula is the one approved by PAUL VI: *Professio fidei,* SCDF, in *AAS* 59 (1967), p. 1058. Regarding the connection of the Magisterium with the faith, cf. JOHN PAUL II, MP *Ad tuendam fidem,* May 18, 1998.

3. *S. Th.*, II–II, q. 1, a. 10.

4. These are the closing sentences of the present profession of faith: "Firma fide quoque credo ea omnia quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive sollemni iudicio sive ordinario et universali Magisterio tamquam divinitus revelata credenda proponuntur.

"Firmiter etiam amplector ac retineo omnia et singula quae circa doctrinam de fide vel moribus ab eadem definitive proponuntur.

"Insuper religioso voluntatis et intellectus obsequio doctrinis adhaereo quas sive Romanus Pontifex sive Collegium episcoporum enuntiant cum Magisterium authenticum exercent etsi non definitivo actu easdem proclamare intendant." *AAS* 81 (1989), pp. 104–106.

the rights and duties that are entailed and the juridical benefits that are protected by the very fact that a profession of faith is required and actually made, and particularly these last statements on the magisterium.

A profession of faith reflects the relationship between the faithful and the magisterium, a relationship that in itself is independent on whether a public profession of faith, like the one in question, is made. In fact, any of the faithful should fully accept the infallible definitions, in their express form, and any of the faithful must confess religious obedience to the basic authentic magisterium (cf. c. 205).[5] However, by virtue of publicly making a profession, the relationship between the faithful and the magisterium attains a certain status. With this in mind, we shall describe the benefits and bonds that arise from the requirement for a public profession of faith.

The *juridical benefits* that are protected are as follows[6]:

— Of course, the fundamental benefits that are proper to the Church's teaching office: the authentic expression of the word of God; the specific mission of the hierarchy and of the faithful in their relationship with the word and evangelization;

— And more specifically, the hierarchy's responsibility to teach authoritatively and demand responsibilities and public commitments from the faithful at certain times;

— The fundamental rights of the faithful with respect to the word, including the right to receive the word, the right to the apostolate, the right to research the word, etc.

4. *Types of magisterium in the profession of faith*

The profession of faith does not include all the magisterial statements, but only certain concrete ones, precisely the most important ones, and the ones that have greater juridical importance (cf. cc. 749–753 and commentaries). We should distinguish the various types of magisterium that appear in the profession of faith to determine the various types of juridical submission that are involved.

5. Cf. also cc. 209 §1, 212, §1, 218, 750, 752, 753.

6. Regarding the juridical relation and the juridical goods in the teaching function of the Church, cf. C.J. ERRÁZURIZ, "La dimensione giuridica del munus docendi," in *Ius Ecclesiae* 1 (1989), pp. 177–193.

Each of the last three paragraphs[7] considers a particular magisterial act, although the first two have to do with two different types within the same definitive magisterium. Here is the distinction:

— the first paragraph has to do with the definitive magisterium on divine revelation;

— the second refers to the magisterium, also definitive, though not in regard to divine revelation, which is generally called *circa doctrinam de fide vel moribus*;

— The third paragraph has to do with the magisterium which does not intend to proclaim a doctrine with a definitive act.

There is a distinction then that depends on the degree of *magisterial commitment* which the authority assumes in his act. On one hand, the first two paragraphs encompass the definitive magisterium in which the authority and his teaching office make a maximum commitment, acting in a conclusive and absolute manner. This definitive magisterium is also known as the infallible authentic magisterium, although this term does not appear in the profession of faith. However, the third paragraph has to do with the non-definitive magisterium, which is also customarily called simply authentic magisterium.

5. *Juridical subjection of the faithful to magisterial authority*

a) *Commitment of the faithful to definitive magisterial proclamations regarding revelation*

The faithful must accept the truths that are taught as having been *divinely revealed.* The formula for the profession of faith, in the first paragraph having to do with the magisterium,[8] states that these truths are part of the faith and that they should therefore be accepted by the faithful with the assent proper to this virtue (cf. c. 750).

Since an act of faith is asked for, the faithful will have the assurance and absolute certainty of being *free of error* in an area that receives the supernatural light of the gift of God. At the same time, the faithful are obligated, both in conscience and in their outward actions, not only to avoid any contrary conduct and doctrine, but also to accept and defend that which is a part of the revealed deposit by virtue of the authority's having declared so.

7. Cf. note 4.; cf. CDF, *Nota doctrinalis...*, cit., nos. 5–10, which considers in detail the tree final paragraphs of the profession of faith, the diversity of the magisterial process and the subjugation it expects of the faithful.

8. Cf. note 4.

b) *Commitment of the faithful to other definitive proclamations*

The first of the last three paragraphs of the profession of faith[9] does not pose any particular difficulties. There has always been general acceptance of what it clearly sets forth. The same cannot be said of the second paragraph, which is precisely the one that adds a major innovation to the profession currently in effect. This paragraph considers a magisterium that is not explicitly addressed by the canons of the Code.

The second paragraph has to do with the doctrine expressed by the magisterium, *circa doctrinam de fide vel moribus*, in a definitive manner. We have seen that the definitive magisterium is also considered in the first paragraph, but now it appears in a broader sense: it considers the definitive magisterium on truths that are not considered as having been divinely revealed. This area of the magisterium is what theologians have come to call secondary infallibility.[10] The Church understands that the charism of infallibility also encompasses these truths; since only in this way is the infallibility on what is revealed truly defended and really possible.[11]

It is not easy to determine what is still included in this magisterial act, but an expression used in the formula we are now considering offers some help. It is said that the magisterium has this capacity in what it definitively proposes. The very magisterial acts themselves will show us how far this *circa doctrinam de fide vel moribus* capacity extends. It is therefore not necessary to lay down an *a priori* definition of the possible areas, since an *a posteriori* determination can be made. If the magisterium is manifested as definitive on a certain theme, it is because the faithful can be certain that this area, which is in some way related to faith or morals, can be the object of this definitive class.[12]

The difficulty in determining the area this magisterium has to do with becomes, in practice, the difficulty of recognizing when the magisterium uses a definitive proposition, since it will not always be easy to be certain when a proposition is actually definitive. This difficulty is resolved, insofar as juridical consequences are concerned (and concretely insofar as the due submission of the faithful is concerned), by a determination by the supreme authority that "No doctrine is understood to be infallibly defined unless this is manifestly demonstrated" (c. 749 § 3).

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9. Cf. note 4. Cf. c. 750 § 2.

10. Cf. c. 750 § 2; A. LANG, *Teología Fundamental* (Madrid 1977), pp. 287–296; V. PROAÑO, "Infalibilidad," in *Gran Enciclopedia Rialp*, t. 12 (Madrid 1973), pp. 681–687.

11. Cf. M. SCHMAUS, Teología Dogmática, t. 4 (Madrid 1962), p. 770.

12. See examples of this type of act and the other magistorial acts regarding supreme authority in CDF, *Nota doctrinalis*..., cit., n. 11. Taking into account the magisterial pronouncements of a definitive nature throughout the centuries, one can say that, among other issues, they deal with the following: philosophical doctrines and principles; causes for canonization; historical certainties that affect Scripture, Tradition, or the Magisterium itself; Pontifical approval of the spirit of Church affiliated associations. Cf. A. LANG, *Teología Fundamental*, cit., pp. 287–296.

How should the faithful accept this magisterium? The statements we are considering say nothing about the virtue on which acceptance by the faithful rests. Nothing is said either of faith, expressly mentioned in the first paragraph[13] in mentioning what is divinely revealed, or of religious submission, on which rests the submission of the faithful to the magisterium according to the third paragraph.[14] This point remains unclear, but the submission of the faithful is clearly defined. Regardless of the internal basis, the faithful must accept, both internally and externally (*firmiter amplector ac retineo*), any definitive magisterial proposition. The faithful must accept internally, and maintain in their external conduct, what is taught in this magisterium, in the absolute certainty of *being free of error.*

c) *Commitment of the faithful to the non-definitive magisterial proclamations*

The ultimate expression of the profession of faith[15] proclaims, in short, what is more broadly stated in c. 752, i.e., the relationship and the bond of submission that arise from the fact that persons exist in the Church who have the ministry of teaching with authority. The faithful always have a relationship of dependence, of submission, to the authentic magisterium. This submission and the commitments it entails are made clear publicly in the formula of the profession of faith, although only with respect to the Roman Pontiff and the Bishops' College, since nothing is said about the activity of the bishops with the faithful entrusted to them. This latter relationship, however, is addressed in c. 753.

The profession of faith uses a term that may shed light on the submission of the faithful that is demanded by non-definitive magisterial propositions. *Obsequio religioso* according to c. 752 (cf. commentary) is asked for, which is introduced by the term *adhaereo*. This term does not appear in the canon, and it is precisely a fundamentally important term. The authority is asking, demanding, not that the faithful merely "not oppose," but that they adhere, i.e., agree and manifest union with the magisterial teaching itself. Further, adhesion of their will and intellect is concretely asked for: *religioso voluntatis et intellectus obsequio doctrinis adhaereo.*

By examining this last paragraph together with the three paragraphs in general of the profession of faith in the Magisterium and cc. 751ff, the

13. Cf. note 4. In *Nota doctrinalis*... cit., the CDF explains: "With regard to due acceptance of the truths proposed by the Church as revealed by God (1st section) or as definitive (2nd section) ... no distinction is made with regard to the full and irrevocable nature of the due acceptance .... The difference concerns the supernatural power of faith: in the case of the truths of the 1st section, the acceptance is based directly on faith in the authority of the word of God (truths *de fide credenda*); in the case of the truths of the 2nd section, it is based on the faith in the assistance of the Holy Spirit to the Magisterium and in the Catholic doctrine of the infallibility of said Magisterium (doctrines *de fide tenenda*)."

14. Cf. note 4.

15. Cf. note 4.

juridical relationship between the magisterial authority and the faithful can be better defined.

Finally, we should mention the clarity which the profession of faith provides on so-called "dissent."

If what the Church asks is adhesion at least to magisterial teaching, dissent, an external indication of opposition to infallible or non-infallible magisterial teaching, presupposes an act against true communion. In no case may one speak of a "right to dissent" in the Church. The rupture implied by dissent may be punished by the authority with sanctions of one kind or another, both for the rupture itself because of the damage it may cause the faithful.

The CDF Instruction *Donum veritatis*,[16] recognizing the difficulties the faithful may occasionally encounter in internally accepting certain non-infallible teachings (nos. 24–31), points out that dissent, "a public attitude of opposition to the Magisterium of the Church," illustrates that a given member of the faithful "is not in harmony with 'sentire cum Ecclesia'" and further, that in the case of theologians, they would be placing themselves "in contradiction to the commitment they freely and consciously made to teach in the name of the Church" (no. 37). This dissent is a true evil opposed to the unity of the people of God, and as such it should be avoided by everyone, although it is especially "incumbent upon the Pastors to safeguard this unity and prevent tensions arising from life from degenerating into division" (no. 40). Thus, not only is there no right to dissent, but also the authority has the duty to take steps to prevent dissent from occurring, and if it occurs, the authority must use all just means to prevent the division from resulting in further evils in others among the faithful.

6. *Form of the profession and persons obliged to make it*

The profession of faith must be made orally, in the presence of the authorities stipulated in the canon. It does not seem that these authorities are to receive the profession of faith as mere witnesses only, but they may serve as witnesses if necessary. The profession of faith may be made individually or in a group, in which several persons utter the formula simultaneously. A proxy is not satisfactory, since the canon states that the profession must be made "in person."

The situations in which professions must be made are clearly delineated in the canon. Of these situations, the fact that professors of certain subjects must make the profession at the beginning of their term of office has acquired particular importance. It should be noted that this prescription

16. Cf. CDF, Instr. *Donum veritatis*, May 24, 1990, in *AAS* 82 (1990), pp. 1550–1570.

(cf. no. 7) applies not only to Theology professors and not only those teaching at Catholic universities: it is also required of professors, or rather of everyone who teaches (it says *docents*) at any university when teaching about faith or good morals. In addition to the cases where a profession of faith is universally prescribed and the cases mentioned in this canon, particular norms may lay down this requirement for other occasions.

7. *Oath of fidelity*

In addition to a profession of faith, there is also an obligation to take the *oath of fidelity* that the Holy See has prescribed in the situations mentioned in the canon under nos. 5°–8°.[17] This oath, which historically arises from the anti-modernist oath prescribed by Pius X,[18] consists in the statement and public commitment, before God as a witness, to assume and perform the duties of the office being taken in communion with the pastors and in accordance with the norms of the Church. By means of this oath, the faithful who are to keep it are made aware of and publicly commit to the obligations they are assuming, in addition to the moral obligation they assume. Those who, in some way and by virtue of acting in the Church's name, commit to the authority or to the Church itself are thereby subject to, and obligated to take, this oath. According to the statements themselves as contained in the oath, it may be said that the obligations assumed thereunder are as follows: *a*) the diligent and faithful fulfillment of the obligations proper to their office or position; *b*) the faithful safeguarding, proclamation and expounding of the deposit of faith; *c*) the obligation to respect legality; and *d*) submission, i.e., respect and obedience of the pastors and their legitimate prescriptions.

Under c. 380, bishops and those who are equivalent to bishops must also take an oath of fidelity "before taking canonical possession of office." The formula that must be used in these cases, which has been prescribed since July 1, 1987, has not been officially published.[19]

8. *The profession of faith and the oath of fidelity demonstrate the bonds between communion and faith*

Neither the profession of faith nor the oath of fidelity *can be considered mere formal external acts.* The Church is not interested in carrying

17. Cf. CDF, *Professio fidei et...*, cit., p. 104.
18. Const. Pascendi, mp Sacrorum Antistitum, and SCHO, Decr. March 22, 1918, in AAS 10 (1918), p. 136.
19. Published in H. SCHMITZ, "'Professio fidei' und 'Iusiurandum fidelitatis'. Glaubensbekenntnis und Treueid. Wiederbelebung des Antimodernisteneider?," in *Archiv für katolisches Kirchenrecht* 157 (1988), pp. 353–429.

out a mere formality: it wants the juridical obligation to make a profession of faith to rest on true communion and identification with the faith. Professions or oaths made by anyone who manifestly behaves contrary to the statements contained therein cannot be accepted; i.e., they cannot be accepted if simulation is in any way known for a fact. Also, if a profession and oath are duly made and taken, the authority has a reference instrument that spells out the commitments that were made and, to a certain extent, what communion and faith require in carrying out the office or function.

The general acceptance of the magisterium that is made in the profession of faith entails an acknowledgment that the faith applies to any relationship between the faithful and the magisterium. It is precisely by virtue of the faith that the faithful acknowledge and accept general submission to those in the Church who exercise the mission of teaching with authority.

The profession of faith and the oath are positive bonds that ensure communion with and fidelity to the Church. The law, in providing a vehicle for them and in requiring them, facilitates the saving mission to which all the faithful are committed.

LIBER IV
De Ecclesiae munere sanctificandi

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De sacramentis

T. I.	**De Baptismo**
T. II.	**De sacramento Confirmationis**
T. III.	**De sanctissima Eucharistia**
T. IV.	**De sacramento paenitentiae**
T. V.	**De sacramento unctionis infirmorum**
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PARS II
De ceteris actibus cultus Divini

T. I.	**De sacramentalibus**
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PARS III
De locis et temporibus sacris

T. I.	**De locis sacris**
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BOOK IV
The Sanctifying Office of the Church

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The Sacraments

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PART II
The Other Acts of Divine Worship

PART III
Sacred Places and Times

INTRODUCTION

Eloy Tejero

In view of the value attributed by Vatican II to the *tria munera* in stating the efficacy of Christ's mystery in the edification of the Church (*AG* 15, 39; *AA* 2), the regeneration of the faithful (*LG* 13, 32), the activity of the Apostolic College (*UR* 2; *CD* 2), the design of the episcopal ministry (*LG* 20–27), the functions proper to the presbyteral order (*PO* 1), and the basic ecclesiastical condition of the laity (*LG* 31; *AA* 3–4), it is only natural that the *CIC* would openly welcome the *munus sanctificandi* for the treatment of the subject matter included in book IV.

The wisdom of this criterion has been unanimously recognized by the doctrine,[1] with regard to the accuracy with which it encompasses the

1. Cf. E. TEJERO, commentary on book IV, in *Pamplona Com*; J. MANZANARES, "Principios informadores del nuevo Derecho sacramental," in *Temas fundamentales en el nuevo Código* (Salamanca 1984), pp. 359–361; T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico* (Pamplona 1991), pp. 459–461; D. COMPOSTA, "Liber IV. De Ecclesiae munere sactificandi," in *Commento al Codice di Diritto canonico*, edited by P.V. PINTO (Rome 1985), pp. 513–515; V. CHE CHEN-TAO, "Il 'munus sanctificandi' nel nuovo codice di Diritto canonico," in *La nuova codificacione canonica* (Rome 1983), pp. 743–53; M. MORGANTE, *I sacramenti nel Codice di Diritto canonico. Commento giuridico-pastorale* (Rome 1984), pp. 5–15; L. MISTÒ, "Il libro IV: La funzione di santificare della Chiesa. Il nuovo Codice di Diritto canonico," in *La scuola cattolica* 112 (1984), pp. 279–282; A. MONTAN, "I sacramenti," in *Il diritto nel mistero della Chiesa*, II (Rome 1979), pp. 41–47; B. HONINGS, "I sacramenti in generale nel nuovo Codice," in *Il nuovo Codice di Diritto canonico. Novità, motivazione e significato* (Rome 1983), pp. 335–336; C.J. ERRÁZURIZ, "Intorno ai rapporti tra sacramenti e diritto della Chiesa," in *Il Diritto ecclesiastico* 99 (1988), pp. 417–418; A. LONGHITANO, "I sacramenti 'azioni di Cristo e della Chiesa', in *Il Codice del Vaticano II. I sacramenti della Chiesa* (Bologna, 1989), pp. 7–9; c. VAN DE WIEL, "The Sacraments in the 1983 Code of Canon Law. Introduction, Norms, Baptism and Confirmation," in E*phemerides Theologiae* 66 (1990), p. 160; E. CAPELLINI, "I sacramenti della salvezza," in *La normativa del nuovo Codice* (Brescia 1983), pp. 165–167.

subject matters therein developed, while at the same time allowing a progressive succession of subjects in the canons it includes. With the sanctifying function of the Church consolidated on Christ's *munus sacerdotale*, which brings about the sanctification of all and exercises the public worship to God, a wide and solid base is available to include the canonical treatment of the sacraments, of the other acts of divine worship and of sacred places and times. In making the overview of this book now, we are in a position to perceive the originality of the perspective with which ecclesiastical law approaches each of these core subjects and the basic lines of their treatment in the *CIC*.

I. THE CODE AND LITURGICAL LAW

Regarding the contemplation of the liturgy in cc. 834–839, the provisions of c. 2 must be taken into account: "For the most part the Code does not determine the rites to be observed in the celebration of liturgical actions. Accordingly, liturgical laws which have been in effect hitherto retain their force, except those which may be contrary to the canons of the Code."

This predominance of the *CIC* over the liturgical norms is indicative of the sobriety with which it limits itself to pointing to the basic normative lines that guarantee the condition of the public good inherent in any liturgical act: "Through the liturgy a complete public worship is offered to God by the head and members of the mystical body of Christ" (c. 834 § 1). "This worship takes place when it is offered in the name of the Church" (c. 834 § 2). "Each [minister of the Eucharist] ought to remember that he is responsible for the common good of the whole Church."[2] Furthermore, the common good of the Church brought about by the liturgy is "the summit toward which the activity of the Church is directed; it is also the fount from which all her power flows" (*SC* 10).

This same perspective that tries to guarantee the public good inherent in the liturgy explains the determination made by c. 834 § 2, regarding the necessity that the worship be offered by the legitimately designated persons and by means of acts approved by the authority of the Church. This applies as well to the exclusive competency of the Apostolic See to order the liturgy (c. 838 § 1); it stems from the fact that "liturgical actions are not private, but are celebrations of the Church itself as the 'sacrament of unity'" (c. 837 § 1).

In the sobriety maintained by the *CIC* in treating liturgical subjects, pre-eminence is given to its canons over certain rules of the *General Instruction of the Roman Missal* and of the *Rituals*. These liturgical texts

2. JOHN PAUL II, Letter *Dominicae cenae*, in *AAS* 72 (1980), p. 144.

had advanced certain canonical treatments, such as the requirements for a valid and lawful reception of the sacraments and the acts before or after their celebration. Accordingly, the *CDWDS*, upon the promulgation of the *CIC*, specified a whole series of *variationes* to be entered into the liturgical books, as a result of the coming into effect of the code norms.[3]

II. The Sacraments in the Law of the Church

The affirmation of the specific scope of canon law does not refer only to the liturgy. Liturgical law also maintains its own line of treatment regarding other disciplines, which must be highlighted since it refers to the subject matter discussed in this book.

In fact, we shall not find in the *CIC* the dogmatic formulae in which the magisterium has expressed the contents of the faith regarding the sacraments and divine worship, nor the criteria that permit moral theology to express the effect of the sacraments on the knowledge of the organizing principles of behavior that are guided by a scrupulous conscience, nor the guidelines with which pastoral theology indicates the forms of behavior that yield the best fruits in the acts through which the sacred ministers pour out their zeal for the souls.

Church law, in agreement with all the formulae of faith regarding the sacraments, regulates all the aspects of sacramental discipline that transcend the person of the minister and the receiving subject, to place them in a relationship of justice between themselves and with the other members of the people of God. The contents of justice that guide the proper performance of services by the minister manifest the degree to which it is true that the Church makes the sacraments. And, in addition, the perception of the new juridical condition brought about by the sacrament in the receiving subject, with regard to the other members of the Church, manifests the truth with which the structure of the Church is affirmed through the sacraments. In this sense it is fitting to remember, with c. 840, that, through the sacraments, "the sanctification of the faithful is brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion." In point of fact, it is not possible to have a personality in the Church without adhering to the sacramental economy (c. 96), nor is it possible to be in communion with the Church visible on earth without professing faith in the sacraments and without receiving them in fact (c. 205).

3. Cf. "Variationes in novas editiones librorum liturgicorum ad normam Codicis Iuris Canonici nuper promulgati introductae," in *Notitiae* 19 (1983), pp. 540 ff.

1. *Just administration of the sacraments*

Closely related to this insertion of the sacraments in the heart of the Church's very being on earth, there is a need to establish in the contents of the faith the basic criteria regarding their just administration: "Since the sacraments are the same throughout the universal Church, and belong to the divine deposit of faith, only the supreme authority in the Church can approve or define what is needed for their validity ... [and] to determine what is required for their lawful celebration, administration and reception and for the order to be observed in their celebration" (c. 841).

a) The sacraments of faith of the Church

The fact that Luther denaturalized the sacraments—denying their efficacy to sanctify the faithful by attributing it exclusively to the faith—cannot justify the presentation of the efficacy of the sacraments torn off from the faith with which the Church espouses divine revelation about them. Hence, the wisdom with which c. 835 stresses that Christian worship is always a work that "must proceed from and rest upon faith." The same must be said for c. 840, which, among the defining features of the sacraments, does not silence their consideration as "signs and means by which faith is expressed and strengthened."

Thus, the *CIC* echoes the Vatican II doctrine (*SC* 59), which is not new,[4] since, as Saint Thomas says, it "is faith itself that demands that man find liberation from sins by the power of the passion of Christ, which acts through the sacraments."[5] However, we must take into consideration that it is the faith of the Church with respect to each sacrament that must be learned, to perceive its own effectiveness: the Church, "depository of the merits of Christ and endowed with interpretative authority of his sanctifying will, applies through its faith, to the ritual gesture carried out, the transcendental spiritual significance and the efficacy of the redemptive mystery of Christ."[6]

The faith of the Church regarding each sacrament must not be confused with the faith of the person who administers, or of the person who receives, the sacrament. Personal deficiencies of those administering or receiving the sacraments cannot make us forget that it is Christ who acts through them. This basic principle leads Saint Augustine to stress that the sacrament "in homine iusto et in homine iniusto semper sanctum est,"[7] that "fieri potest ut homo integrum habeat sacramentum et perversam fidem."[8] Since the perversion of the faith does not necessarily entail the

4. Cf. L. VILLETTE, *Foi et sacrements*, I and II (Paris 1959 and 1964 respectively).
5. *S. Th.*, III, q. 68, a. 4 ad 2.
6. L. VILLETTE, *Foi et...*, cit., II, p. 371. Cf. P. RODRÍGUEZ, "Fe y sacramentos," in *Sacramentalidad de la Iglesia y sacramentos* (Pamplona 1983), pp. 551–584.
7. *De baptismo*, VI, V, 7, in *CSEL*, LI, p. 303.
8. Ibid., III, XIV, 19, pp. 208–209.

perversion of the sacrament's integrity, heretics or schismatics can make the sacraments, because "nec possunt novum aliquid aut aliud agere, nisi quod iam dudum apud suam didicerunt matrem."[9] Thus, in reference to the sacraments of the heretics, Saint Augustine says: "ex Ecclesia sunt omnia dominica sacramenta."[10]

But the fact that heretics, schismatics and sinners may administer and receive the sacrament, in its integrity, does not imply that such sacrament be *salutare*, since "omnia sacramenta Christi non ad salutem, sed ad iudicium habentur sine caritate unitatis Christi."[11] We are faced then with the *ficta receptio sacramenti*, which does not carry *pax*, *caritas*, *unitas* or *salus*.[12] Although he does not use an identical terminology, Saint Thomas[13] stresses this same doctrine when he introduces *res et sacramentum* as the first effect of a valid sacrament, which cannot be impeded by heresy, schism or any other sin; but those sins do impede grace and charity, the eventual effect of the sacrament or *res tantum*.

b) Guaranteed classifications of the validity of the sacraments

There is, then, a first datum to be deduced from the faith of the Church with respect to the sacraments, of great importance in the canonical order: the deficiencies of the ministers or of the subjects do not necessarily impede the validity of the sacraments, even if they go against the faith of the Church,[14] but can impede salutary grace, the eventual effect of the sacrament. This distinction of the scope of validity of the sacrament regarding its fruits of grace and charity operates profoundly in the canonical order, which, while maintaining its characteristic effectiveness in determining the valid and relevant acts in the external order of the Church and in its social structure, must also pay attention to the external elements that contribute to the increase of charity.

In line with the determination that ecclesiastical law must make regarding the validity or nullity of the sacraments and, consequently, regarding whether they must be repeated or not, the canons in book IV express some clear criteria about the requirements arising from each sacramental sign, the necessary intervention of the minister and the capacity of the receiving subject.

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9. OPTATUS OF MILEVUS, *Libri VII*, I, 11, in *CSEL*, XXVI, p. 14.
10. ST. AUGUSTINE, Epist. XCIII, XI, 46, in *CSEL* XXXIIII, p. 488.
11. ST. AUGUSTINE, *Contra litteras Petiliani*, III, XLIIII, 87, in *CSEL*, LI, p. 365.
12. Cf. E. TEJERO, "La 'sanctitas sacramenti' y su 'ficta receptio' en la doctrina de San Agustín," in *Anuario Jurídico y Económico Escurialense* 26 (1993), pp. 423–449.
13. Cf. *S. Th.*, III, q. 69, a. 7 and q. 72, a. 7.
14. Cf. STEPHEN I, *Letter to St. Cyprian*, ed. G. Hartel, in *CSEL* 3/II, p. 799; COUNCIL OF ARLES (314 A.D.), c. 9, in CCH, CXLIII, ed. C. Munier, pp. 10–11; CONC. NICEN., cc. 8 and 19, ed. P.P. Joannou, pp. 30 and 40–41; SIRICIUS, *Letter to Himerius of Tarragon*, c. 1, 2, in *PL* 84, p. 631.

As for the elements composing the sacramental sign itself, the *CIC* is always very precise: baptism "is validly conferred only by a washing in real water with the proper form of words" (c. 849). The same precision is found in c. 880 regarding the validity of confirmation; in c. 898 § 1 regarding the Eucharist; in c. 959 about penance; in c. 998 about anointing of the sick; in c. 1008 about orders, and in c. 1057 regarding marriage.

Concerning the requirements demanded from the minister for the validity of each sacrament, the canons set them forth in accordance with the demands proper to the minister's intervention in each sacramental sign. For this reason, the recognition granted to the validity of baptism administered by "any person who has the requisite intention" (c. 861 § 2) has no parity with the precise determination made about who can validly administer the other sacraments: c. 882, about the minister of confirmation; c. 900 § 1, about the Eucharistic minister; cc. 965 and 966, about the minister of penance; c. 1012, about the minister of ordination; and cc. 1057 and 1108, about the minister of marriage.

Church law manifests a similar diligence in determining the subjects who are able to receive each of the sacraments: c. 864 regarding baptism; c. 889 § 1 about confirmation; c. 912 about the Eucharist; c. 987 about penance; c. 1024 about orders, and c. 1095 regarding marriage.

c) Just flexibility in the celebration of the sacraments

The validity of each sacrament is guaranteed through the essential requirements of the sacramental sign, the necessary intervention of the minister, and the capacity of the subject. The canonical order must also set forth those determinations which—in relation with the celebration of the sacrament, with the legitimate performance of the minister, and the reception of the subject—contribute more intensely to the *honor sacramentorum*, to wisdom in the ministerial service and to a more vigorous cohesion of the faithful as a result of the spiritual fruits proper to the sacramental grace. Multiple determinations established in this book tend toward this end. Not always being able to guarantee the spiritual and invisible fruit, these determinations are charged with the pastoral wisdom of the Church, deployed during so many centuries of service to its faithful in the sacramental ministry.

In the treatment of each sacrament, the *CIC* always devotes one chapter to the canonical norms regarding its celebration, which presuppose the elements that determine their validity and also the specific liturgical rules regarding sacramental rites. A distinctive characteristic of these norms is the flexibility with which they try to harmonize proper attention to the honor and decor of the sacramental celebrations with the zeal to remedy any need or urgency arising from particular situations. These criteria are evident in c. 850, regarding the celebration of baptism; in c. 853, about the obligation to bless baptismal water; in cc. 872 and 873, about baptismal sponsors; in c. 892, about confirmation sponsors; in

c. 905, regarding the celebration of the Eucharist more than once on the same day; in c. 925, about the possibility of having communion in the species of wine alone in case of necessity; in cc. 961 and 962, regarding danger or grave necessity, which recommend giving absolution to several penitents at the same time, without the individual and integral confession, as the only ordinary means of reconciliation for the faithful who is conscious of grave sin (c. 960); in c. 977, regarding the danger of death, which permits the absolution of the accomplice of grave sin; in cc. 999 and 1000, about the necessity that justifies blessing the oil of the sick by any presbyter and the administration of the anointing only on the forehead, or using an instrument whenever so indicated by a grave reason; in c. 1010, regarding the pastoral reasons that may recommend celebrating an ordination on ferial days; in c. 1116, about the danger of death or the existence of a situation that does not allow one who is competent to marry to attend the marriage.

It is obvious that the references above are in agreement, taking into consideration multiple factual situations that modify the normal development of sacramental ceremonies. This is true because it is thus demanded by reasons that justify changing the sacramental actions according to the rules provided by the liturgy. The same flexibility, with regards to multiple factual circumstances, is observed in the determination of the appropriate day or time for the celebration of the sacraments: "Though baptism may be celebrated on any day, it is recommended that normally it be celebrated on a Sunday or, if possible, on the vigil of Easter" (c. 856).

Provision for situations regarding the place where baptism may be administered is even broader; starting from the fact that the proper place for this sacrament is a church or oratory (c. 857 § 1), it is later established that the proper parish church or that of the parents is the general norm to follow (c. 857 § 2); then it is stated that the local ordinary may order that a baptismal font be placed also in another church or oratory within the limits of the parish (c. 858 § 2). Nevertheless, it is recognized that there may be circumstances of fact that legitimate the reception of baptism in another church or oratory (c. 859). Furthermore, provision is made that, in case of necessity, baptism can be legitimately administered in private homes (c. 860 § 1). And, when one might think that all the possible hypotheses of fact may have been exhausted, c. 860 § 2 goes on: "Unless the diocesan bishop has decreed otherwise, baptism is not to be conferred in hospital, except in a case of necessity or for some other pressing pastoral reason."

There are not as many open possibilities regarding the place of confirmation: "It is desirable that the sacrament of confirmation be celebrated in a church and indeed during Mass. However, for a just and reasonable cause it may be celebrated apart from Mass and in any fitting place" (c. 881). The Eucharist can be celebrated every day and at any time (c. 931) and must be administered in a sacred place or any other fitting

place (c. 932). An ordination "is to be celebrated during Mass, on a Sunday or holy day of obligation. For pastoral reasons, however, it may take place on other days also, even on ordinary weekdays" (c. 1010). Finally, marriage, according to c. 1115, must be celebrated in the parish where either of the contracting parties has his domicile or quasi-domicile or has resided during one month, or, in the case of vagrants, in the parish where they reside at that time. Nevertheless, with permission from the appropriate ordinary or from the appropriate parish priest, marriage may be celebrated elsewhere. In addition, cc. 1130–1133 contemplate the criteria to be followed in the celebration of a secret marriage.

d) The minister obliged to administer the sacrament

If, as we have just seen, the demands of justice influence the very form of celebrating the sacraments, their influence is even more obvious in the treatment given by the *CIC* to the actions befitting the ministers obliged to administer the sacraments. With regard to the demands that the sacramental sign itself makes on the persons who can administer the sacrament, and without considering its actual recipients yet, there are two types of ministers: ordinary and extraordinary. Although this double differentiation does not work for all the sacraments, it provides some basic criteria in relation to their just administration.

The very nature of baptism admits that the bishop as well as the presbyter and the deacon be considered its ordinary ministers (c. 861 § 1). The persons mentioned in § 2, while not called extraordinary ministers, may be considered as such. In relation to confirmation, it is the bishop who is named the ordinary minister in c. 882. This same canon does not refer to the presbyter endowed with the faculty to confirm as an extraordinary minister, perhaps since the validity of the sacrament postulates that license; and this makes it difficult to see how the presbyter would be an extraordinary minister. Regarding the Eucharist, it is not possible to differentiate between ordinary and extraordinary ministers in the preparation of this sacrament since "The only minister who, in the person of Christ, can bring into being the sacrament of the Eucharist is a validly ordained priest" (c. 900 § 1). But it is indeed proper, regarding the administration of Holy Communion, to speak of ordinary ministers—the bishop, the presbyter and the deacon—and of extraordinary ministers: the acolyte or other appointed faithful (c. 910). In the other sacraments it is not proper to apply the double distinction we have been considering, since their specific nature does not allow it: "Only a priest is the minister of the sacrament of penance" (c. 965). "Every priest, but only a priest, can validly administer the anointing of the sick" (c. 1003 § 1). "The minister of sacred ordination is a consecrated Bishop" (c. 1012). Finally, neither is it possible to apply to marriage the distinction between ordinary and extraordinary minister, regardless of which theological opinion may be defended regarding the ministers of this sacrament.

But determining who may be the ordinary ministers of each sacrament is not sufficient to specify which minister is juridically obliged to administer the sacrament to a particular member of the faithful. Following a criterion that is too territorial and does not contemplate the influence on this point of personal structures for the healing of souls, such as military parishes or those of émigrés, c. 862 attributes exclusively to the territorial parish priest the lawful administration of baptism. Canons 884–888 treat similarly the obligation of the diocesan bishop regarding the administration of confirmation in his territory both to his subjects and to those who are not. The determination of the specific minister who is obliged to administer the Eucharist is made in c. 911 § 1, only regarding the Viaticum for the sick: "The duty and right to bring the blessed Eucharist to the sick as Viaticum belongs to the parish priest, to assistant priests, to chaplains and, in respect of all who are in the house, to the community Superior in clerical religious institutes or societies of apostolic life." Regarding the anointing of the sick, c. 1003 § 2 states: "All priests to whom has been entrusted the care of souls, have the obligation and the right to administer the anointing of the sick to those of the faithful entrusted to their pastoral care."

The sacrament of penance is treated in a way all its own in the determination of the juridical scope affecting those who adominister this sacrament. On the one hand, "within the limits of his jurisdiction, the faculty to hear confessions belongs to the local ordinary, to the canon penitentiary, to the parish priest and to those who are in the place of the parish priest" (c. 968 § 1). On the other hand, those mentioned above "are bound to provide for the hearing of the confessions of the faithful entrusted to them, who reasonably request confession" (c. 986 § 1). In addition, we must take into account that "all the Christian faithful are free to confess their sins to lawfully approved confessors of their own choice, even to one of another rite" (c. 991).

With respect to ordination, the *CIC* also makes specific determinations that pinpoint which bishop must ordain in each particular situation: "No Bishop is permitted to consecrate anyone as Bishop, unless it is first established that a pontifical mandate has been issued" (c. 1013). Regarding the presbyterate and the diaconate, c. 1015 states that each one be ordained by the bishop himself or with legitimate dimissorial letters from him. Finally, regarding marriage, it is determined that "Only those marriages are valid which are contracted in the presence of the local Ordinary or parish priest or of the priest or deacon delegated by either of them, who, in the presence of two witnesses, assists" (c. 1108 § 1).

e) Requirements of the subject in order for the fruitful reception of the sacraments

The determinations made by the *CIC* regarding which elements are necessary for the validity of each sacrament, regarding the just flexibility in their celebration and the specific minister who must prepare them do

not exhaust the treatment of the relations of justice surrounding the administration of the sacraments. It is still necessary to consider the provisions that refer to the subject, which, without affecting the validity of the sacrament, already taken into consideration, determine the lawful acts of the minister and seek the best spiritual fruits for the subject.

The juridical provisions regarding the subject receiving the sacraments are founded on the value and the necessity of the sacraments for the persons and the church community. This results in references to other rights and obligations, which have different perspectives and do not always reside directly in the subject. Thus, in relation to the baptism of infants, c. 867 § 1 states that "Parents are obliged to see that their infants are baptised within the first few weeks." And regarding the anointing of the sick, c. 1001 states that "pastors of souls and those who are close to the sick are to ensure that the sick are helped by this sacrament in good time."

Referring simultaneously to the obligation of receiving the sacrament of confirmation and to due preparation for this sacrament, c. 890, after mentioning the faithful who are going to receive the sacrament, continues: "parents and pastors of souls, especially parish priests, are to see that the faithful are properly instructed to receive the sacrament and come to it at the opportune time." Canon 914 broaches the subject of children's first communion in a similar way: "It is primarily the duty of parents and of those who take their place, as it is the duty of the parish priest, to ensure that children who have reached the use of reason are properly prepared and, having made their sacramental confession, are nourished by this divine food as soon as possible."

The obligation of receiving Holy Communion at least once a year, discussed in c. 920 § 1, refers directly and exclusively to the Christian faithful. And, in parallel with this precept, c. 989 states: "All the faithful who have reached the age of discretion are bound faithfully to confess their grave sins at least once a year."

Regarding the baptism of adults, c. 865 makes no mention of the obligation to receive the sacrament. This silence is logical since it is impossible to speak of juridical obligations in persons who are not members of the Church. In this hypothesis, however, the provisions of c. 748 are fully applicable regarding the obligation that all men have of seeking the truth in all matters concerning God and his Church.

Regarding the obligation to receive the sacraments, ordination and marriage have a special treatment, because, as opposed to the other sacraments, they are not instituted for all the faithful. Since these two sacraments carry with them specific vocations in the people of God, it is only starting from the existence of those vocations in specific persons that we can speak of the juridical relevancy of such situations. Nevertheless, its canonic relevancy, rather than influencing the line of juridical obligation, is translated as a fundamental right, which is very clear regarding

marriage, the *ius connubii*. This right also seems applicable to the reception of ordination, since, as has been said by E. de la Lama, "the vocational option of those who feel called to the priesthood merits as much respect as any other fundamental option and, in principle, as long as the existence of other rights that may condition or limit are not shown, this respect is just and satisfies a basic human right."[15]

The parallel existing between ordination and marriage is not limited exclusively to the prior existence of a divine vocation which permits detecting the existence of a series of demands of justice related to these two sacraments. The parallel treatment extends, on the part of the *CIC*, to include the necessary absence of certain impediments (cc. 1040–1049 and 1073–1094), as well as the demand for specific requirements (cc. 1026–1039) and specific capacities (cc. 1024 and 1095–1107).

The juridical connection existing between the faithful and each sacrament does not refer only to the direct reception of the sacramental signs. Before this reception takes place, the fruitful reception demands fulfillment of some preliminary juridical duties which are also indicated by the *CIc*. So closely are these preliminary duties related to the reception of the sacrament itself that, as we saw before, cc. 867, 890, and 913 together contemplate the obligation of procuring the reception of the sacrament as well as the obligation related to the preliminary preparation for the sacrament.

Furthermore, the three canons mentioned above do not stop to specify the contents of the preparation required by those sacraments. In this sense, c. 865 is more revealing, determining the requirements for the reception of baptism by adults. Nevertheless, regarding the baptism of children, c. 868 attributes special significance to the sensible hope that they will be educated in the Catholic religion. This matter is developed more comprehensively in cc. 1063–1072, about the pastoral care that must precede marriage, and in cc. 232–272, about the specific education of candidates to the priesthood.

f) Right of the faithful to receive the sacraments

The canonical provisions mentioned hitherto regarding the validity of the sacraments, the just flexibility in their celebration, the duties of justice which oblige their ministers and the relationship of justice that the faithful themselves have with each sacrament, reveal the solid foundation of the rights of the faithful regarding the sacraments. Recognized in a general way in c. 213, these provisions are based on the fact that all the faithful need the sacraments in order to personally accept the saving mystery in Christ and to insert themselves in the structuring of the Church on

15. E. DE LA LAMA, "¿Vocación divina o vocación eclesiástica? Una dialéctica superada para explicar la naturaleza de la vocación sacerdotal," in *Ius Canonicum* 31 (1991), pp. 13–56 and 431–507.

earth. We are thus looking at subjective rights having a public character, which can only be satisfied by public acts, through the opportune services of the sacred ministers.[16]

Referring to these services owed in justice to the faithful, c. 843 § 1 states: "Sacred ministers may not deny the sacraments to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them." It will suffice to relate the terms of this canon to the statements made previously. These concern the canonical determinations regarding the validity of the sacraments, the just flexibility of their ceremonies, the minister obliged in justice by canonical law to administer them and the specific circumstances in which the faithful are obliged to receive the sacrament. Additionally, these determinations concern the interpretative criteria of the juridical duty of the ministers, set forth in c. 843 § 1, as the effective channel to satisfy the rights of the faithful to the sacraments.

Far from interpreting this normative flexibility as implying a lack of attention to the effective duration of the rights of the faithful in relation to the sacraments, it must be interpreted as dedicated to their effective reception. This is because it is the urgent necessity which originates this just flexibility in the celebration of the sacraments. Nor can the provisions regarding the suitable preparation to receive the sacraments be interpreted as detrimental to the effectiveness of the rights of the faithful, since "according to their respective roles in the Church, both pastors of souls and the other members of the Christian faithful have a duty to ensure that those who ask for the sacraments are prepared for their reception. This should be done through proper evangelization and catechetical instruction, in accordance with the norms laid down by the competent authority" (c. 843 § 2).[17]

2. *Effect of the sacraments in the structure of the Church*

Besides the norms related to justice in the administration of the sacraments, which we have just outlined, the effect that each of the sacraments has on the structuring of the Church as a visible social body must

16. Cf. J. HERVADA *Elementos de Derecho constitucional canónico* (Pamplona 1987), p. 134; T. RINCÓN-PÉREZ, "Derecho administrativo y relaciones de justicia en la administración de los sacramentos," in *Ius Canonicum* 28 (1988), pp. 69–74; P. MONETA, "Il diritto ai sacramenti dell'iniziazione cristiana," in *Monitor Ecclesiasticus* 115 (1990), pp. 613–626; J.I. ARRIETA, "Il diritto dei soggeti nell'ordinamento canonico," in *Fidelium Iura* 1 (1991), pp. 4–46; J.Mª. SANCHIS, "Communione e tutela penale dei sacramenti," in *Monitor Ecclesiasticus* 111 (1991), pp. 185–194.

17. Cf. T. RINCÓN-PÉREZ, "La salvaguardia de los derechos de los fieles en el proceso de preparación para los sacramentos," in *Fidelium Iura* 3 (1993), pp. 101–135.

also be shown.[18] In agreement with the effect attributed by c. 205 to the sacraments in the structuring of the Catholic Church on earth, the *CIC* initiates its specific treatment of each sacrament with a capital canon. The intention of these is to show the revealing lines of the ecclesiastical situation in which the subject who has received this sacrament finds himself, with the sacrament's own particular efficiency.

This is the line of work started in 1971 by the *Coetus de sacramentis*, in dealing with the terms in which the *Coetus de Lege Ecclesiae Fundamentali* had set forth the juridical situation brought about by baptism.[19] It showed the necessity of maintaining this same criterion in the treatment of confirmation: "In Codice I. c. non habetur canon, quo ante omnia affirmantur significatio sacramenti confirmationis eiusque momentum in vita christiana. Talis autem canon, de sententia consultorum, requiritur."[20] The *Coetus de sacramentis* is also driven, at this point, by the way in which the *Coetus de Lege Ecclesiae Fundamentali* has formulated the proposal that it considers necessary to include in the treatment of confirmation.

As a result of this initial effort, the *Schema canonum* of 1975 introduced a capital canon at the beginning of the treatment of each sacrament which pointed out, very briefly, the ecclesiastical situation resulting from the reception of each sacrament.[21] Nevertheless, regarding the Eucharist, the initial canon referred specifically to the celebration of the Eucharistic Sacrifice,[22] without encompassing initially the ecclesiastical potentiality of this sacrament, through which the Church lives and grows continuously. This deficiency was overcome in the *Schema canonum* of 1980 (c. 851), which refined the formulations of the previous *schema*, bringing them close to their definitive wording in the *CIC*.

Expressing the radical transformation brought about by baptism, c. 849 states that, through baptism, human beings are regenerated as children of God and incorporated into the Church, conformed to Christ by an indelible character. Canon 96 describes baptism as the incorporation of a man or woman into the Church of Christ that constitutes him/her a person in it, with the duties and the rights that are proper to Christians. Canon 879 says that confirmation "confers a character. By it the baptised continue their path of Christian initiation. They are enriched with the gift of the Holy Spirit, and are more closely linked to the Church. They are

18. Cf. E. TEJERO, "La 'Communio sacramentorum' y la 'communio catholica' en la doctrina de San Agustín," in *Revista Española de Derecho Canónico* 42 (1990), pp. 445–480; idem, "La 'res et sacramentum' estructura y espíritu del ordenamiento canónico. Síntesis doctrinal de Santo Tomas," in *Sacramentalidad de la Iglesia y sacramentos* (Pamplona 1983), pp. 427–460.

19. Cf. *Comm.* 3 (1971), pp. 198–199.

20. Ibid., p. 203.

21. Cf. *Schema canonum* of 1975, c. 9, p. 22; c. 40, p. 28; c. 61, p. 33; c. 130, p. 46; c. 181, p. 56; c. 190, p. 58; c. 242, p. 72.

22. Cf. ibid., c. 61, p. 33.

made strong and more firmly obliged by word and deed to witness to Christ and to spread and defend the faith." Canon 897 states that the Eucharistic Sacrifice, through which the Church lives and continuously grows, is "the summit and the source of all worship and Christian life. By means of it the unity of God's people is signified and brought about, and the building up of the body of Christ is perfected. The other sacraments and all the ecclesiastical works of the apostolate are bound up with, and directed to, the blessed Eucharist."

Similarly, the ecclesiastical dimension of the sacrament of penance is expressed in c. 959, which heads the code's treatment of this subject matter: those who receive this sacrament "receive from God, through the absolution given by that minister, forgiveness of sins they have committed after baptism, and at the same time they are reconciled with the Church, which by sinning they wounded." Although the ecclesiastical dimension *in terris* of the anointing of the sick pales somewhat compared with that "by which the Church commends to the suffering and glorified Lord the faithful who are dangerously ill so that he may support and save them" (c. 998), the same cannot be said of the sacrament of ordination. The ecclesiastical dimensions of this sacrament are set forth by c. 1008: "By divine institution some among the Christian faithful are, through the sacrament of orders, marked with an indelible character and are thus constituted sacred ministers; thereby they are consecrated and deputed so that, each according to his own grade, they fulfil, in the person of Christ the Head, the offices of teaching, sanctifying and ruling, and so they nourish the people of God." Finally, c. 1055 § 1 describes the ecclesiastical situation brought about by marriage in this way: "a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children."

Taking into account that these different ecclesiastical situations brought about by the sacraments are of utmost importance to the Church, it is understandable that the Church itself would have a need for juridical certainty regarding the sacraments. Consequently, we have norms regarding the annotation and proof of baptism (cc. 875–878) and of confirmation (cc. 894–896); regarding the registration and certification of the ordination made (cc. 1053–1054), as well as the breadth with which the *CIC* treats the effect of marriage (cc. 1134–1140), of the bond's dissolution (cc. 1141–1150), and of separation in marriage, while the bond remains (cc. 1151–1155).

III. OTHER ACTS OF DIVINE WORSHIP, SACRED TIMES AND PLACES

These statements constitute parts two and three of book IV, coinciding in part with the system followed by the *CIC*/1917, since the subject order has been inverted: the other acts of divine worship are treated first

and the sacred places and times later, an order of subject matters contrary to that offered by the *CIC* 1917. This change seems to be indicative of the greater dignity of the acts of worship in comparison with the places in which they are celebrated.

As in the *CIC*/1917, five titles comprise the part devoted to the other acts of divine worship. However, only two of them maintain the same statement, related to the "Cult of the Saints, of Sacred Images and of Relics" and the one referring to the "Vows and Oaths." Of the three that precede them, two were not included in the *CIC*/1917: "Sacramentals" and "The Liturgy of the Hours." The third, "Church Funerals," encompasses a subject matter that the *CIC*/1917 included in the section devoted to "Sacred Places." The titles "The Custody and the Worship of the Blessed Sacrament," "Sacred Processions," and "Sacred Utensils" are not included in the *CIC*.

The third part of the *CIC*, "Sacred Places and Times," has a somewhat briefer structure that in the *CIC*/1917, because all the canons related to ecclesiastical funeral rites disappeared from this part. It is true that the chapter "Shrines," which did not exist before, has been introduced here, but it is shorter than the one covering the subject matter now excluded from this part.

834 **§ 1. Munus sanctificandi Ecclesia peculiari modo adimplet per sacram liturgiam, quae quidem habetur ut Iesu Christi muneris sacerdotalis exercitatio, in qua hominum sanctificatio per signa sensibilia significatur ac modo singulis proprio efficitur, atque a mystico Iesu Christi Corpore, Capite nempe et membris, integer cultus Dei publicus exercetur.**

§ 2. Huiusmodi cultus tunc habetur, cum defertur nomine Ecclesiae a personis legitime deputatis et per actus ab Ecclesiae auctoritate probatos.

§ 1. The Church carries out its office of sanctifying in a special way in the sacred liturgy, which is indeed seen as an exercise of the priestly office of Jesus Christ. In the liturgy, by the use of signs perceptible to the senses, our sanctification is symbolised and, in a manner appropriate to each sign, is brought about. Through the liturgy a complete public worship is offered to God by the head and members of the mystical body of Christ.

§ 2. This worship takes place when it is offered in the name of the Church, by persons lawfully deputed and through actions approved by ecclesiastical authority.

SOURCES: §1: *MD* 522, 528, 529; *SC* 7
§2: c. 1256; *MD* 555; SCRit Instr. *De musica sacra*, 3 sep. 1958, 1 (*AAS* 50 [1958] 632); *LG* 11

CROSS REFERENCES: cc. 132, 519, 530, 566, 840, 841, 849, 879, 882, 883–885, 887, 897, 900, 959, 966–975, 1008, 1055, 1108–1114

COMMENTARY

Eloy Tejero

Although it cannot be said that this canon contains a definition of sacred liturgy, something which was intentionally avoided by the editors of the Apostolic Constitution *Sacrosanctum Concilium*,[1] the four propositions gathered in its § 1 provide essential information regarding the

1. CF. J.A. JUNGMANN-J. WAGNER, "Anmerkungen zum Text der Konzilskonstitution 'über die heilige Liturgie,'" in *Liturgisches Jahrbuch* 14 (1964), p. 91; I. GORDON, *Liturgia et potestas in re liturgica* (Rome 1966), p. 33.

definition of this discipline, and contain the fundamental criteria for the canonical treatment of this specific area of the practice of the Church. It is thus necessary to analyze the propositions one by one and to discern the intimate unity that exists among them.

1. *Particular value of liturgy*

The canon points out, in the first place, that by means of the liturgy the Church fulfills *peculiari modo* its sanctifying function. This peculiarity of the liturgy, among the different activities proper to the Church, derives from the fact that "in obedience, therefore, to her Founder's behest, the Church prolongs the priestly mission of Jesus Christ mainly by means of the sacred liturgy."[2] With regard to its radical condition as *opus Christi sacerdotis*, liturgical activity "is a sacred action surpassing all others. No other action of the Church can equal its efficacy by the same title and to the same decree" (*SC* 7).

As opposed to the proclamation of the death and resurrection of Christ made by apostolic preaching, liturgical action implies, in addition, a real exercise of the *opus salutis* through the Sacrifice and the sacraments, "around which the entire liturgical life revolves" (*SC* 6). It is evident that the liturgy "does not exhaust the entire activity of the Church. Before men can come to the liturgy they must be called to faith and to conversion." (*SC* 9). But this priority in time, which is proper to evangelization, cannot make us forget that "the goal of apostolic endeavor is that all who are made sons of God by faith and baptism should come together to praise God in the midst of his Church, to take part in the Sacrifice and to eat the Lord's Supper" (*SC* 10).

In view of this peculiar efficacy of the liturgy to bring together the faithful through baptism and the Eucharist, its particular influence on the configuration of the Church on earth may also be seen as an *admirabile unitatis sacramentum*, the nature of which is human and divine, visible and invisible, active and contemplative, rooted in the world and pilgrim to glory (Cf. *SC* 2). Because the efficacy of the sacraments celebrated by the liturgy are the "fount from which all her power flows" (*SC* 10).[3]

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2. PIUS XII, Enc. *Mediator Dei*, November 20, 1947, in *AAS* 39 (1947), p. 522.

3. Cf. M. GARRIDO, "La liturgia en la vida de la Iglesia: sus principios de reforma," in *Estudios sobre el Vaticano II* (Bilbao 1966), pp. 437–448; A. MONTAN, "I sacramenti," in *Il Diritto nel mistero della Chiesa*, III (Rome 1983), pp. 41–43.

2. *Liturgy, the exercise of the priestly office of Christ in the present*

As some of the texts previously transcribed suggested, the peculiar value of the liturgical actions comes from the fact that in them "habetur veluti Jesu Christi sacerdotalis muneris exercitatio" (*SC* 7). This is a doctrine that the Sacrosanctum Concilium takes from the Encyclical. *Mediator Dei*: "the Divine Redeemer has so willed it that the priestly life begun with the supplication and sacrifice of His mortal body should continue without intermission down the ages in His Mystical Body which is the Church."[4]

We find the same teaching directly formulated in the letter to the Hebrews, which highlights the difference between the priesthood of the ancient law and of the new law: the first was abrogated "because of its weakness and uselessness, for the law had made nothing perfect" (Heb 7:18–19), "according to this arrangement, gifts and sacrifices were offered which cannot perfect" (Heb 9:9). But "Christ appeared as a high priest of the good things that have come ... he entered once for all into the Holy Place taking ... his own blood, thus securing an eternal redemption" (Heb 9:11–13).

The letter to the Hebrews also teaches the efficacy with which Christ exercises his priesthood in the Church, since "he has appeared once for all at the end of the age to put away sin by the sacrifice of himself" (Heb 9:26). "For by a single offering he has perfected for all time those who are sanctified" (Heb 10:14), "since then we have a great high priest who has passed through the heavens" (Heb 4:14). Therefore throughout later history, the faithful will live in fidelity, holding fast to the confession of their great high priest, Jesus (cf. Heb 4:14). Consequently, those who exercise the priesthood of Christ throughout history are the dispensers of a "single offering [through which] he has perfected for all time those who are sanctified" (Heb 10:14).[5]

Because the liturgy involves a real exercise of the priestly function of Christ, the magisterium of the Church has highlighted the peculiar form in which Christ is present in the celebration of the sacraments, especially in the Eucharistic Sacrifice.[6] As opposed to the way in which Christ is present in the exercise of works of mercy (cf. Mt 25:40), or in the pilgrim Church that wishes to attain eternal life (Eph 3:17), in the assistance to the preaching of the New Testament or in the actions proper to the government of the faithful, the presence of Christ in the celebration of the sacraments attains a distinctive reason. Because "the sacraments are the actions of Christ, the same One who administers them through men.

4. *AAS* 39 (1947), p. 522..
5. Cf. Col 1, 25–28 and Eph 3, 8–12.
6. Cf. ibid., p. 528; *SC*, 7; *MF*, pp. 762–764.

Therefore, the sacraments are holy in themselves, and by the power of Christ they pour grace into the soul when they touch the body."[7]

This peculiar relationship of the sacraments to the mystery of Christ is expressed thus by St. Thomas: "A sacrament is, in its proper sense, what is ordained to signify our sanctification. Three aspects of sanctification may be examined: the very cause of our sanctification, which is the passion of Christ; the form of our sanctification, which consists of grace and the virtues; and the ultimate end of our sanctification, which is eternal life. All of this is signified by the sacraments. For this reason, a sacrament is a sign of remembrance of what came before, that is, the passion of Christ; a demonstrative sign of what is brought about in us by the passion of Christ, that is, grace; and it is also a heralding sign, that is, indicative of future glory."[8]

In any case, we must point out that the form of our sanctification and of the presence of Christ is different in the Eucharist than in the other sacraments: the Eucharist "is softer in devotion, more beautiful in the mind and more saintly in its content because it contains Christ himself and is the consummation of all spiritual life and the end of all the sacraments."[9]

3. *Liturgy sanctifies persons through signs perceivable by the senses*

This efficacy of the liturgy to sanctify man is based on the specific action of the mystery of Christ in it, which we have just examined. Joint contemplation of these two basic aspects of the liturgy seem necessary to overcome certain reductionist views that have tried to disconnect the participation in the mystery of Christ, implied by the sacraments, from its efficacy to bring about grace. The patristic doctrine highlighted the first of these two aspects, while scholastic theology stressed more the efficacy of the sacraments to bring about grace. There has been no lack of interpretations tending to obfuscate these two basic aspects of liturgical activity. It will suffice to reread St. Thomas's text, just cited, on the commemorative significance of the sacraments. It is apparent that the theology most representative of the medieval era did not incur in this supposed polarization of the sacramental sign in the efficacy to bring about grace, forgetting its realization in the mystery of Christ memorially signified. This also applies to patristic theology which, it is true, highlighted the potential of the sacrament to signify the mystery of Christ, but it also underlined the

7. *MF*, pp. 763–764.
8. *S. Th.*, III, q. 60, a. 3. Cf. E. TEJERO, "La 'res et sacramentum' estructura y espíritu del ordenamiento canónico. Síntesis doctrinal de Santo Tomás," in *Sacramentalidad de la Iglesia y Sacramentos* (Pamplona 1983), pp. 436–37.
9. *S. Th.*, III, q. 73, a. 3.

participation of the receiving subject. Hence, Saint Augustine wrote: "Sacramentum est in aliqua celebratione, cum rei gestae commemoratio ita sit, ut aliquid etiam significare intelligatur, quod sancte accipiendum est"[10]

The typical power of the liturgy to sanctify humanity is affirmed by Vatican II in direct reference to "those who are in the Church" and to "those who are outside" (*SC* 2): "The liturgy daily builds up those who are in the Church, making of them a holy temple of the Lord" (*SC* 2), and "especially from the Eucharist, grace is poured upon us as from a fountain" (*SC* 10). Those who are outside the Church also reach, somehow, the sanctifying efficacy of the liturgy; they are "ceaselessly engaged in ... interceding for the salvation of the entire world" (*SC* 83). Besides, because "it marvelously increases their power to preach Christ" (*SC* 2), it is possible for "the Church to make itself known to those who are outside" (*SC* 41).

In relation to the efficacy of the liturgy in building the mystical Body of Christ in history, the *CIC* contains very significant contributions. Among them may be highlighted cc. 849, 879, 897, 959, 998, 1008, and 1055, which, being capital in the canonical treatment of each sacrament, specify clearly the ecclesiastical position proper to the subject who receives those sacraments that create the structure of the Church on earth.

Not all liturgical actions are equally efficacious. It is necessary at this point to remember the doctrine set forth by the Encyclical *Mediator Dei*: "It should be clear to all, then, that ... the worship rendered to God by the Church in union with her divine Head is the most efficacious means of achieving sanctity. This efficacy, where there is a question of the Eucharist sacrifice and the sacraments, derives first of all and principally from the act itself (*ex opere operato*). But if one considers the part which the Immaculate Spouse of Jesus Christ takes in the action, embellishing the sacrifice and sacraments with prayer and sacred ceremonies, or if one refers to the 'sacramentals' and the other rites instituted by the hierarchy of the Church, then its effectiveness is due rather to the action of the Church (*ex opere operantis Ecclesiae*), inasmuch as she is holy and acts always in closest union with her Head."[11]

It must be considered, however, that "to obtain this full efficacy it is necessary that the faithful come to the sacred liturgy with the correct spiritual disposition, that they adapt their minds to what their voice is saying and that they cooperate with supernatural grace so that they do not receive it in vain" (*SC* 11).

10. Epist. LV, ch. I, 2, in *PL*, 33, p. 205. Cf. E. TEJERO, "La 'communio sacramentorum' y la 'communio catholica' en la doctrina de San Agustín," in *Revista Española de Derecho Canónico* 47 (1990), pp. 451–466.
11. *MD*, p. 532. Cf. *S. Th.*, III, q. 82, a. 6; a. 7 ad 3.

4. *In liturgy the mystical Body of Christ fully exercises its public worship of God*

In the terseness with which the *CIC*/1917 expressed itself in relation to the liturgy, the concept of *public worship*, contained in c. 1256, is the only one that could be mentioned as indicative of the proper value of the liturgy. This exposition, which ignored the specific values of the liturgy that have been examined heretofore in the analysis of this canon, helps us understand why the canonists, in their doctrinal elaborations built upon the *CIC*/1917, as pointed out by I. Gordon, tended to identify liturgy and public worship.[12] The contributions made by the *CIC* regarding the values that are specifically proper to the liturgical actions of the Church overcome the deficiencies of previous formulations, and, at the same time, provide a better foundation of the public character recognized by all, before and now, as proper to the liturgical acts.

In fact, the public character of the liturgy derives from its previously analyzed values: "The sacred liturgy is, consequently, the public worship which our Redeemer as head of the Church renders to the Father, as well as the worship which the community of the faithful renders to its Founder, and through Him to the heavenly Father. It is, in short, the worship rendered by the Mystical Body of Christ in the entirety of its Head and members."[13] This deepening of the roots of the public character of the liturgical actions made by *MD*, improves the formulations of the *CIC*/1917, and is continued by Vatican II, the text of which reiterates frequently the same expressions of Pius XII in relation to this point (*SC* 7, 26, 90, 98).

The public character of the liturgical actions flows from the very public character of the New Testament of God with men, the sanctifying potential of which they update, and finds its maximum expression in the Eucharist. For this reason, Saint Thomas states: "Bonum commune spiritualiter totius Ecclesiae continetur substantialiter in ipso Eucharistiae sacramento."[14] Regarding the other sacraments, their public character is also evident since they "are signs and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion" (c. 840).

5. *Conditions for every liturgical act*

This canon's § 2 enumerates three conditions that must be fulfilled by any liturgical act or act of public worship, because they are demanded

12. Cf. I. GORDON, *Liturgia et potestas in re liturgica* (Rome 1966), pp. 55–57.
13. *MD*, pp. 528–529.
14. *S. Th.*, III, q. 65, a. 3 ad 1.

by its very nature. The first is that it be performed in the name of the Church. This first condition derives from the fact that "liturgical services are not private functions but are celebrations of the Church" (*SC* 26). In them "Ecclesia vel orat vel canit vel agit" (*SC* 33). What's more, Vatican II expresses the conviction that "The principal manifestation of the Church consists in the full, active participation of all God's holy people in the same liturgical celebrations, especially in the same Eucharist" (*SC* 41). Although it may be single ministers who perform the liturgical actions, it is the Church that fulfills, through them, its ministry. Thus, regarding the ministry of the Eucharist, Saint Thomas says: "Ipse solus potest gerere personam totius Ecclesiae qui consacrat Eucharistiam, quae est sacramentum totius Ecclesiae."[15] They also act in the name of the Church who administer the other sacraments or perform the liturgical actions instituted by the Church, such as the sacramentals, the office of the hours ("the voice of the Bride herself addressed to her Bridegroom" (*SC* 84)) or the celebrations of the word of God.

The second condition that must be fulfilled by any liturgical act, as determined by § 2 of this canon, is that it must be "offered ... by persons lawfully deputed." This *deputatio* is established by rules of a different scope, since at times it is in the divine Law itself that we find the fundamental criteria for this determination, as is the case with the necessity of being a priest in order to celebrate Holy Mass (c. 900). At other times, the determinations of the Church must be taken into account to be able to specify who is the person designated for a particular liturgical action (cf. cc. 132, 519, 530, 566, 882, 883–885, 887, 966–975, 1108–1114).

The final condition established in c. 834 for a particular act to be considered to have liturgical scope is that it must be a matter of "actions approved by ecclesiastical authority." Everything we have been saying about the specific values of the liturgical actions highlights the rationality of its approval by the authority of the Church. This necessity is engendered in the very being of the liturgy, which necessarily involves a regulated action, and "only the supreme authority in the Church can approve or define what is needed for their validity ... to determine what is required for their lawful celebration, administration and reception and for the order to be observed in their celebration" (c. 841).

15. Ibid., q. 37, a. 5 ad 2.

835 **§ 1. Munus sanctificandi exercent imprimis Episcopi, qui sunt magni sacerdotes, mysteriorum Dei praecipui dispensatores atque totius vitae liturgicae in Ecclesia sibi commissa moderatores, promotores atque custodes.**

§ 2. Illud quoque exercent presbyteri, qui nempe, et ipsi Christi sacerdotii participes, ut eius ministri sub Episcopi auctoritate, ad cultum divinum celebrandum et populum sanctificandum consecrantur.

§ 3. Diaconi in cultu divino celebrando partem habent, ad normam iuris praescriptorum.

§ 4. In munere sanctificandi propriam sibi partem habent ceteri quoque christifideles actuose liturgicas celebrationes, eucharisticam praesertim, suo modo participando; peculiari modo idem munus participant parentes vitam coniugalem spiritu christiano ducendo et educationem christianam filiorum procurando.

§ 1. The sanctifying office is exercised principally by Bishops, who are the high priests, the principal dispensers of the mysteries of God and the moderators, promoters and guardians of the entire liturgical life in the Churches entrusted to their care.

§ 2. This office is also exercised by priests. They, too, share in the priesthood of Christ and, as his ministers under the authority of the Bishop, are consecrated to celebrate divine worship and to sanctify the people.

§ 3. Deacons have a share in the celebration of divine worship in accordance with the provisions of law.

§ 4. The other members of Christ's faithful have their own part in this sanctifying office, each in his or her own way actively sharing in liturgical celebrations, particularly in the Eucharist. Parents have a special share in this office when they live their married lives in a christian spirit and provide for the christian education of their children.

SOURCES: *LG* ch. V
§1: *SC* 41; *LG* 26, 41; *CD* 11, 15
§2: *LG* 28, 41; *CD* 15; *PO* 5; GIRM 59
§3: *LG* 29, 41
§4: *SC* 26–31; *LG* 41; *GS* 48; *MQ* 530

CROSS REFERENCES: cc. 226, 383–390, 838 §4, 851, 855, 861, 863, 867, 868, 882–888, 890, 899, 910, 911, 914, 943, 961 §1, 965–986, 999–1003, 1026–1039, 1063, 1064, 1071, 1072, 1077–1080, 1105 §2, 1108–1123, 1125–1133, 1144 §2, 1145, 1147, 1148 §3, 1153 §1, 1165 §2

COMMENTARY

Eloy Tejero

This canon, in setting forth the criteria that refer to the exercise of the *munus sanctificandi* on the part of the bishops, priests, deacons and the other faithful, acts in tune with the Vatican II doctrine. From the participation of the *tria munera Christi*, the Council had contemplated the episcopal ministry (*LG* 20–27), the nature of the priesthood (*PO* 1), the ecclesiastical condition of the baptized and the mission of the laity (*LG* 31 and *AA* 3–4). In any case, *Lumen gentium* 41 is the council text closest to the canon that we are currently discussing.

To adequately lay the foundations for the specific reason of the sanctifying function proper of the bishops, the canon points out that they have the fullness of the priesthood. In fact, "the Bishop, invested with the fullness of the sacrament of orders, is the steward of the grace of the supreme priesthood, above all in the Eucharist, which he himself offers, or ensures that it is offered ... Moreover, every legitimate celebration of the Eucharist is regulated by the Bishop, to whom is confided the duty of presenting to the divine majesty the cult of the Christian religion and of ordering it in accordance with the Lord's injunctions and the Church's regulations, as further defined for the diocese by his particular decision. Thus the Bishops ... through the sacraments, the frequent and fruitful distribution of which they regulate by their authority, sanctify the faithful. They control the conferring of Baptism ... are the original ministers of Confirmation; it is they who confer sacred Orders and regulate the discipline of Penance, and who diligently exhort and instruct their flocks to take the part that is theirs, in a spirit of faith and reverence, in the liturgy and above all in the holy sacrifice of the Mass" (*LG* 26).

The *CIC* has determined, in various provisions, the forms in which the bishop must act to administer the grace of the supreme priesthood. This is the sense of cc. 387–390, related to the bishop as "the High Priest of his flock from whom the life in Christ of his faithful is in some way derived and upon whom it in some way depends" (*SC* 41); c. 838 § 4, about his competencies in the ordination of the sacred liturgy; cc. 861, 863, regarding his intervention in the administration of baptism; cc. 882–888, about the celebration of confirmation; cc. 899 and 910, regarding his intervention in the celebration and administration of the Eucharist; cc. 961 § 1

and 965–975, about his competency as moderator of the penitential discipline; cc. 999 and 1003, about the blessing of the oil and the anointing of the sick; cc. 1010–1023 and 1026–1039, about ordination and its requirements; and cc. 1064, 1071, 1077–1080, 1105 § 2, 1108–1121, 1125–1133, 1144 § 2, 1145, 1147, 1148 § 3, 1153 § 1, and 1165 § 2, regarding his interventions in relation to marriage.

These code provisions set forth in detail the competency and responsibilities proper to the episcopal ministry as far as the principal dispenser of the mysteries of God, moderator, promoter and custodian of the liturgical life in the Church to him entrusted (cf. *CD* 15). Because, as Saint Thomas states, as opposed to the priest, who "represents Christ, insofar as Christ himself fulfilled the ministry, the bishop represents Him insofar as He instituted other ministries and founded the Church. From which follows that it behooves the Bishop to dispose regarding the divine offices, establishing the sacred worship like Christ. And it is also for this reason that the Bishop is specially called the bridegroom of the Church, as is Christ."[1]

Paragraph 2 formulates the exercise of the sanctifying function on the part of the priest, as a synthetic expression of the doctrine expressed by Vatican II: "Priests are consecrated by God through the ministry of the bishop that they should be made sharers in a special way in Christ's priesthood and by carrying out sacred functions, act as his ministers who through his Spirit continually exercises his priestly function for our benefit in the liturgy" (*PO* 5). *Lumen gentium* 28 states, in similar terms: "Whilst not having the supreme degree of the pontifical office, and notwithstanding the fact that they depend on the Bishops in the exercise of their own proper power, the priests are for all that associated with them by reason of their sacerdotal dignity … it is in the eucharistic cult or in the eucharistic assembly of the faithful (*synaxis*) that they exercise in a supreme degree their sacred functions … And on behalf of the faithful who are moved to sorrow or are stricken with sickness they exercise in an eminent degree a ministry of reconciliation and comfort, whilst they carry the needs and supplications of the faithful to God the Father."

Also in relation with the exercise of the sanctifying function on the part of the priests, the *CIC* lists a diverse range of specifications, competencies and responsibilities: c. 530, about the functions proper to parish priests; c. 861, regarding the ministry of baptism; cc. 882–888, regarding the administration of confirmation; cc. 899–911, about the celebration of the Eucharist and its minister; cc. 965–986, regarding the minister of penance; cc. 999–1003, about the celebration and the minister of the anointing of the sick; and cc. 1063, 1072, 1108–1123, about the celebration of marriage.

1. ST. THOMAS, *Suppl.*, q. 40, a. 4 ad 3.

In contrast with the terseness with which § 3 of this canon refers to the action of the deacons in the celebration of the divine worship, *Lumen gentium* 29 contemplates in more detail their activities as consistent with the nature of its ministry: "At a lower level of the hierarchy are to be found deacons, who receive the imposition of hands 'not unto the priesthood, but unto the ministry.' For, strengthened by sacramental grace they are dedicated to the people of God, in conjunction with the bishop and his body of priests, in the service of the liturgy, of the Gospel and of works of charity. It pertains to the office of a deacon, in so far as it is assigned to him by the competent authority, to administer Baptism solemnly, to be custodian and distributor of the Eucharist, in the name of the Church, to assist at and to bless marriages, to bring Viaticum to the dying, to read the sacred scripture to the faithful, to instruct and exhort the people, to preside over the worship and the prayer of the faithful, to administer sacramentals, and to officiate at funeral and burial services." Consistent with these determinations, c. 861 views the deacons as ordinary ministers of baptism; c. 910 looks at deacons in a similar fashion with respect to the administration of holy communion; c. 943 regarding the exposition of the Blessed Sacrament and the eucharistic blessing; and c. 1108 about the celebration of marriage.

Paragraph 4 recognizes that all the faithful have their own share in the sanctifying function, whose foundation is expressed thus by *Lumen gentium* 10: "The baptized, by regeneration and the anointing of the Holy Spirit, are consecrated to be a spiritual house and a holy priesthood, that through all the works of Christian men they may offer spiritual sacrifices and proclaim the perfection of him who has called them out of darkness into his marvelous light (cf. 1 Pt 2:4–10). Therefore all the disciples of Christ, persevering in prayer and praising God (cf. Acts 2:42–47), should present themselves as a sacrifice, living, holy and pleasing to God (cf. Rom 12:1)."

Starting from this situation, which constitutes the faithful as "true adorers such as the Father seeks" (*SC* 6), "Mother Church earnestly desires that all the faithful should be led to that full, conscious, and active participation in liturgical celebrations which is demanded by the very nature of the liturgy, and to which the Christian people, 'a chosen race, a royal priesthood, a holy nation, a redeemed people'(1 Pet 2: 4–5) have a right and obligation by reason of their baptism" (*SC* 14). Regarding this influence of baptism in sanctifying the faithful, the doctrine expressed by *Lumen gentium* 32 is based on the call to sanctity made to all the faithful and on the equal dignity of all in the building of the Church.

Although the canon does not mention expressly the specific activity of the laity in the sanctifying function of the Church, it is fitting to remember here the teaching of Vatican II regarding the secular nature as proper and peculiar to the laity, in which they "contribute to the sanctification of the world, as from within like leaven" (*LG* 31). "Since he wishes to

continue his witness and his service through the laity also, the supreme and eternal priest, Christ Jesus, vivifies them with his spirit and ceaselessly impels them to accomplish every good and perfect work … . To those whom he intimately joins to his life and mission he also gives a share in his priestly office, to offer spiritual worship for the glory of the Father and the salvation of man" (*LG* 34).

Intimately related to this participation of the laity in the sanctifying function[2] is the reference made in § 4 of the canon to the participation of Christian spouses in this same function, which has to be contemplated from the doctrine set forth in *Lumen gentium* 41, regarding the call to sanctity made to all the faithful, drawing special attention to the insertion of the matrimonial vocation in that doctrine. The subject matter has been developed more fully in *Familiaris consortio* 56: "Just as husbands and wives receive from the sacrament the gift and responsibility of translating into daily living the sanctification bestowed on them, so the same sacrament confers on them the grace and moral obligation of transforming their whole lives into a 'spiritual sacrifice.'" This doctrine has been culled in c. 226 and also underlies the provisions established in cc. 851, 855, 867, 868, regarding the duties of parents with respect to the administration of baptism to their children; in c. 890, about their duties regarding the reception of confirmation by their children; in c. 914, about their obligation that their children be prepared to receive the holy communion once they attain the age of reason, which implies previous reception of the sacrament of penance and, consequently, also regarding this sacrament must the parents attend to the appropriate preparation of their children, although this duty is not expressly mentioned in the *CIC*.

2. Cf. T. RINCÓN-PÉREZ, "La participación de los fieles laicos en la función santificadora de la Iglesia. Reflexiones canónicas a la luz de la Exh. Apost. 'Christifideles laici,'" in *Ius Canonicum* 29 (1989), pp. 617–662.

836 **Cum cultus christianus, in quo sacerdotium commune christifidelium exercetur, opus sit quod a fide procedit et eadem innititur, ministri sacri eandem excitare et illustrare sedulo curent, ministerio praesertim verbi, quo fides nascitur et nutritur.**

Since christian worship, in which the common priesthood of Christ's faithful is exercised, must proceed from and rest upon faith, sacred ministers are to strive diligently to arouse and enlighten this faith, especially by the ministry of the word by which faith is born and nourished.

SOURCES: *MD* 536; *SC* 9–11, 33–36, 59; *LG* 10, 11, 28, 34; *CD* 30; *GCD* 57; *DPMB* 55, 59

CROSS REFERENCES: cc. 210–214, 747, 749, 750, 752–754, 840, 841

COMMENTARY

Eloy Tejero

In trying to highlight the specific value of the liturgy to nourish the faith of the faithful, this canon underscores the intimate connection that exists between the contents of this book IV and those of book III. Pius XI's teachings are quite expressive of this relationship: "The liturgy ... is the most important organ of the ordinary magisterium of the Church ... The liturgy is not the *didascalia* of one individual or another, but the *didascalia* of the Church."[1] Nevertheless, it is the doctrine set forth by Vatican II that immediately underlies the brief formulation of this canon.

1. *Liturgy is a service of faith to the common priesthood of the faithful*

With the aim of giving the contents of the canon a juridical dimension, more directly meaningful in the liturgical actions of the members of the Church, the legislator expects the consideration of the Christian worship as an exercise of the priesthood common to all the faithful to be the starting point for the correct understanding of the duties that the sacred ministers have in their liturgical service to nourish the faith of the faithful.

1. PIUS XI, Enc. *Quas primas*, December 11, 1925, in *AAS* 17 (1925), p. 603; cf. A. BUGNINI, *Documenta pontificia ad instaurationem liturgiae spectantia* (Rome 1953), pp. 70ff.

In this sense, the mutual ordering of the ministerial priesthood and the common priesthood, with the mutual relationship of justice therein contained, highlighted in *Lumen gentium* 10, is a reference that must also be to taken into account in order to understand the correct dimension of reality that is proper to the nourishment of the faith derived from any liturgical service of the sacred ministers. This dimension of justice inherent to the service of the faith, proper to the liturgical actions, postulates a cohesiveness of such actions with the *depositum fidei*, which is guaranteed thanks to the assistance of the Holy Spirit, who accompanies the actions of those who have authority in the Church to regulate the liturgical activity, and also assists the legitimate magisterial actions examined in cc. 747–756. Nevertheless, the liturgical actions have a specific authenticity, and thus, even when considered in their potential to nourish the faith of the faithful, cannot be treated as purely magisterial actions.

2. *Liturgy comes from faith*

The first aspect that the canon highlights in the existing relationship between the faith and the liturgy is that the latter proceeds from the faith. In this sense, it is fitting to remember, with the *Sacrosanctum Concilium* 9, that "The sacred liturgy does not exhaust the entire activity of the Church. Before men can come to the liturgy they must be called to faith and to conversion." For this reason the canon underscores the importance of the diligence that the sacred ministers bring to the exercise of the ministry of the word, by which faith is born and nourished. This initial action, calling to faith, finds in the liturgy the culmination of all the activity of the Church (*SC* 10).

3. *Liturgy gives faith plenitude*

But more important than this character of reality before the liturgy, proper to the faith, is that, as the canon states, the liturgy is based on the faith and gives it plenitude. From this perspective, Pius XII[2] read a very eloquent text from Scriptures: "Therefore, brethren, since we have confidence to enter the sanctuary by the blood of Jesus, by the new and living way which he opened for us through the curtain, that is, through his flesh, and since we have a great priest over the house of God, let us draw near with a true heart in full assurance of faith, with our hearts sprinkled clean from an evil conscience and our bodies washed with pure water" (Heb 10, 19–22).

2. *MD*, p. 536.

Sharing in the blood of Christ, which takes place in the sanctuary inaugurated by Him, implies that the faithful will approach it with a sincere heart, in the fullness of the faith. Such plenitude, proper to participation in liturgical actions, may not be equated with the faith with which the magisterial actions are received, since the latter are didactic in their own nature, while liturgical actions have a different entity. The didactic aim of the liturgy is subject to its specific purpose of worshipping God and sanctifying men.[3]

In this sense Vatican II is quite clear: "The purpose of the sacraments is to sanctify men, to build up the Body of Christ, and, finally, to give worship to God. Because they are signs they also instruct. They not only presuppose faith, but by words and objects they also nourish, strengthen, and express it. That is why they are called 'sacraments of faith.' They do, indeed, confer grace, but, in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace to their profit, to worship God duly, and to practice charity" (*SC* 59).

The very efficacy of the sacraments to give grace moves the Church to prepare its faithful, with the expressiveness proper to liturgical actions, so that their souls may receive the best fruits of the sacraments. "But in order that the liturgy may be able to produce its full effects it is necessary that the faithful come to it with proper dispositions, that their minds be attuned to their voices, and that they cooperate with heavenly grace lest they receive it in vain. Pastors of souls must, therefore, realize that, when the liturgy is celebrated, something more is required than the laws governing valid and lawful celebration. It is their duty also to ensure that the faithful take part fully aware of what they are doing, actively engaged in the rite and enriched by it" (*SC* 11).

The liturgy, in its loyalty to its own specific nature, has a superior power to educate the faith of the faithful through the very expressiveness of its own signs that have a unique value to teach and to educate the faithful. "Although the sacred liturgy is principally the worship of the divine majesty it likewise contains much instruction for the faithful. For in the liturgy God speaks to his people, and Christ is still proclaiming his Gospel. And the people reply to God both by song and prayer.

"Moreover the prayers addressed to God by the priest who, in the person of Christ, presides over the assembly, are said in the name of the entire holy people and of all present. And the visible signs which the sacred liturgy uses to signify invisible divine things have been chosen by Christ or by the Church. Thus not only when things are read 'which were written for our instruction' (Rom 15:4), but also when the Church prays or sings or acts, the faith of those taking part is nourished, and their minds

3. Cf. c. VAGAGGINI, *El sentido teológico de la liturgia* (Madrid 1965) pp. 475–482.

are raised to God so that they may offer him their spiritual homage and receive his grace more abundantly." (*SC* 33)

This expressive value of the language of the liturgy was not only highlighted by Vatican II, but also converted into one of the guiding criteria of the liturgical reforms encouraged by the Council. Because of this service that the liturgy provides to the education of the faithful in their faith, it was determined that, in the liturgical celebrations, a more abundant, more varied and more appropriate reading of the sacred Scriptures be established; that a greater value be given to the homily in them as part of the liturgical action. The value of the liturgical catechesis was inculcated and the need to translate liturgical texts into vernacular tongues was underscored.[4]

4. *Lex orandi, lex credendi*

The coherence with which the aphorism *lex orandi, lex credendi* is expressed may be understood in the light of the dense saturation of the liturgy in the language of faith. In any case, it is appropriate to specify in which sense liturgy is the law of the faith: "The liturgy always presupposes and expresses a certain teaching and a certain belief in the broadest sense; but, in many cases, it also presupposes, and follows logically in a very narrow sense, the divine and catholic faith, already explicit, that is, it presupposes and follows the proposition and the acceptance of the dogmas. Sometimes, the liturgy expresses the divine and catholic faith, already explicit, makes it live and corroborates it in the believers; at other times, the liturgy still precedes the explanation of the divine and catholic faith, that is, the proposition and acceptance of the dogmas, and is a powerful occasional factor of this explanation ... . It is not necessary to insist that the liturgy, always and in every case, presupposes and follows logically a certain teaching of the Church and a certain belief in a very general sense. It could be said, in this sense, that the liturgy, always and in every case, presupposes and logically follows the 'faith,' if by 'faith' is understood, not specifically the divine and catholic faith, that is, the faith that is proper to the dogmas, but, in the broadest sense, the belief in general: that which refers to the simple theological doctrine more or less disseminated and common, to the theological opinion, historical or other, even insinuated singly and hypothetically. But we hasten to add that, in this case, it is very ambiguous to speak of 'faith.' It would be better to say simply that the liturgy always presupposes and expresses at least an opinion and perhaps a more or less widespread theological doctrine."[5]

4. Cf. *SC*, 34–36; A BUGNINI, *La riforma liturgica (1948–1975)* (Rome 1983), pp. 56–59.
5. C. VAGAGGINI, *El sentido...*, cit., pp. 494–495.

In the correct understanding of this doctrine, it is fitting to take into account the evolution process by which simple doctrines, more or less widespread in the Church, become dogmas formally proposed as such. In this sense we must remember the provisions set forth in cc. 749 and 750, which determine the magisterial actions having infallible value and the conditions that a doctrine of divine and catholic faith must fulfill. It is evident that the liturgical formulations are not included among that which has the authority to define the divine and catholic faith. Nevertheless, the underlying Christian sense of the liturgy may be a factor that transmits contents proper to the Tradition that may be dogmatically defined at a later time.

5. *Some disequilibrium*

The intensity with which the liturgy nourishes the faith of the faithful and their exercise of the real priesthood cannot be confused with a doctrinal imbalance, that would reduce the liturgy or the sacraments to simple expressive or stimulating signs of the faith of the faithful. On the other hand, we must also take into account that the fruitfulness of the liturgical actions in each of the faithful is, in itself, spiritual and invisible, as is the sincerity of their internal faith. This fact must be taken into consideration in the fair administration of the sacraments on the part of the minister of the Church, since, as Saint Thomas says, "It is not the responsibility of the ministers of the Church to give the grace, but rather the sacraments of grace."[6] Furthermore, it is also important to remember that even a sin as specifically counter to the faith as heresy does not make the valid administration of the sacraments and of the liturgical actions impossible, even if it impedes its fruitfulness whenever we face a heretic in the formal sense.

6. ST. THOMAS AQUINAS, *Suppl.*, q. 36, a. 36 ad 2.

837 **§ 1. Actiones liturgicae non sunt actiones privatae, sed celebrationes Ecclesiae ipsius, quae est "unitatis sacramentum," scilicet plebs sancta sub Episcopis adunata et ordinata; quare ad universum corpus Ecclesiae pertinent illudque manifestant et afficiunt; singula vero membra ipsius attingunt diverso modo, pro diversitate ordinum, munerum et actualis participationis.**

§ 2. Actiones liturgicae, quatenus suapte natura celebrationem communem secumferant, ubi id fieri potest, cum frequentia et actuosa participatione christifidelium celebrentur.

§ 1. Liturgical actions are not private, but are celebrations of the Church itself as the 'sacrament of unity', that is, the holy people united and ordered under the Bishops. Accordingly, they concern the whole body of the Church, making it known and influencing it. They affect individual members of the Church in ways that vary according to orders, role and actual participation.

§ 2. Since liturgical actions by their very nature call for a community celebration, they are, as far as possible, to be celebrated in the presence of Christ's faithful and with their active participation.

SOURCES: §1: *MD* 538, 555; *SC* 26–32; *MF* 761–762
§2: *SC* 14, 26, 27, 48

CROSS REFERENCES: cc. 96, 132, 205, 834, 835, 839, 840, 849, 879, 882–887, 897, 899, 912–923, 959, 966–975, 1008, 1009, 1055, 1108–111

COMMENTARY

Eloy Tejero

In its examination of liturgical actions as celebrations of the Church that belong to its whole body and that call for a community celebration, this canon reiterates, with minimal variations, the text contained in *Sacrosanctum Concilium* 26 and 27, the original writing of which tried to reflect those rules originating from the liturgy, as an action proper to the hierarchy and to the community, which would guide the liturgical reform encouraged by the Second Vatican Council. This exposition (which retains only one particular aspect of the values proper to liturgical actions set

forth in c. 834, once the liturgical reform encouraged by Vatican II is established) is culled in the canon, not only as an interpretative criterion of the liturgical rules already given, but also as a guide to the future behavior of the pastors and of the faithful regarding what is fair in the community celebration of the liturgical actions and in the active participation of the faithful in these actions.

Before presenting the contents that support the positive examination of the liturgical actions as celebrations of the Church itself, § 1 highlights, negatively and by way of contrast, how they differ from private actions (cf. c. 839). This way of expression is traditional and especially developed in the Encyclical *Mediator Dei* by Pius XII , who differentiated the liturgical actions from the *pia exercitia.* The latter, private works of the Christians, prepare them to take part with greater profit in the holy Sacrifice and in the other sacraments. Although liturgical prayer prevails, by its excellence, over the private practice of prayer, such as the times established for personal meditation, for the diligent examination of conscience and for the other spiritual exercises envisaged by Christian asceticism, this prevalence cannot ignore that public prayer and private prayer are aligned and come together in their tendency to educate the souls in Christ.[1]

Clearly, the reference made by the canon to the liturgical actions as belonging to the whole Body of the Church, cannot be understood as if the activities of liturgical worship had been entrusted "generally and universally to the community,"[2] but rather, the divinely ordered union of the people of God must show clearly in these actions. In this sense, the Body of the Church, to which the liturgical actions belong, is considered, in short, by c. 837 § 2 as "the *sacrament of unity,* that is, the holy people united and ordered under the guidance of the Bishops."

The basic concept in this formulation of the very being of the Body of the Church is the *sacrament of unity,* which *Sacrosanctum Concilium* 26 takes from Saint Cipriano's writings,[3] and which, as is well known, holds a prominent place in the Vatican II ecclesiology: "All those, who in faith look towards Jesus, the author of salvation and the principle of unity and peace, God has gathered together and established as the Church, that it may be for each and everyone the visible sacrament of this saving unity" (*LG* 9).[4] With respect to the breadth with which the previous text sees the sacramentality of the Church, c. 837 makes two significant specifications: it places the consideration of the Church, *sacrament of unity,* in relation to the liturgical actions, and points out, as components of the *sacramentum unitatis,* the holy people ordered under the guidance of the bishops.

1. Cf. *MD,* pp. 536–537.
2. Ibid., p. 538; cf. SCDF, Epist., August 6, 1983, in *AAS* 75 (1983), pp. 1002–1003
3. Cf. ST. CYPRIAN, *De catholica Ecclesiae unitate,* 7, in *CSEL,* III, ed. Hartel, pp. 215–216.
4. Cf. *LG,* 1 and 4.

That a concept as comprehensive of the life of the Church as the *sacramentum unitatis* be used in relation to the celebration of liturgical actions, is quite understandable, taking into account that the liturgy, being the public worship of the mystical Body of Christ, that is, of the Head and of the members, is the activity that best represents the *sacrament of unit*, that is the Church. In this sense it is fitting to remember the doctrine of Saint Thomas: "Bonum commune spiritualiter totius Ecclesiae continetur substantialiter in ipso Eucharistiae sacramento."[5]

It must also be adequately understood that the canon refers to the holy people gathered under the guidance of the bishops as the contents of the *sacramentum unitatis*. In this sense, the first fact that must be taken into account is that the bishops, as expressed by the *Lumen gentium* 23, "are the visible source and foundation of unity in their own particular churches, which are constituted after the model of the universal Church." Vatican II itself applies this principle to the scope of the liturgical actions: "The Bishop, invested with the fullness of the sacrament of Orders, is 'the steward of the grace of the supreme priesthood,' above all in the Eucharist, which he himself offers, or ensures that it is offered, from which the Church ever derives its life and on which it thrives. This Church of Christ is really present in all legitimately organized local groups of the faithful, which, in so far as they are united to their pastors, are also quite appropriately called Churches in the New Testament .... In each altar community, under the sacred ministry of the Bishop, a manifest symbol is to be seen of that charity and unity of the mystical body, without which there can be no salvation" (*LG* 26).[6]

It is clear that the communion that the holy people maintain, because it is gathered and ordered under the guidance of the bishops, guarantees that its liturgical celebrations are a symbol of charity and unity of the mystical Body, which includes the hierarchical communion, based on its visible rock of unity, which is the Roman Pontiff. This gives rise to the consistency with which the canon considers the liturgical actions as belonging to the body of the Church.

But the liturgical actions affect, in addition, the body of the Church because they manifest and realize it. In this sense c. 840 states directly: "The sacraments of the New Testament ... are signs and means by which faith ... and our sanctification are brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion." Hence, the sacraments integrate one of the essential elements of the communion with the Catholic Church, as visible society in history, as is pointed out by c. 205. In relation with this potential of the sacraments to manifest and realize the visible body of the Church,

5. *S. Th.*, III, q. 65, a. 3 ad 1
6. Cf. c. 899 §2.

we must also take into account cc. 96 and 849, regarding incorporation into the Church through baptism; c. 879, regarding the ecclesiastical mission stemming from confirmation; c. 897, regarding the Eucharist, through which the Church lives and grows and which is the culmination and source of all worship and of all Christian life and through which all the building of the Church is carried out; c. 959, regarding the ecclesiastical dimension of penance; cc. 1008 and 1009, about the sacrament of ordination and c. 1055, regarding marriage.

All these canonical formulations stem from a basic criterion stated in *Lumen gentium* 11: "The sacred nature and organic structure of the priestly community is brought into operation through the sacraments." The same doctrine, expressed with categories more common to the liturgical area, may be found in *Sacrosanctum Concilium* 2: "For it is the liturgy through which, especially in the divine sacrifice of the Eucharist, the work of our redemption is accomplished, and it is through the liturgy, especially, that the faithful are enabled to express in their lives and manifest to others the mystery of Christ and the real nature of the true Church."

The final phrase of c. 837 § 1 must be understood in light of all that we have been considering: liturgical actions "affect individual members of the Church in ways that vary according to orders, role and actual participation." The expression "affect" refers to the way in which the faithful participate externally in the liturgical actions, not to the properly sacramental effects caused by these actions. In line with this form of expression of c. 837, *Sacrosanctum Concilium* 28 states: "In liturgical celebrations each person, minister, or layman who has an office to perform, should carry out all and only those parts which pertain to his office by the nature of the rite and the norms of the liturgy."

In the measure that it refers to the liturgical actions, the exercise of the sanctifying function by bishops, priests, deacons and the other faithful, examined in c. 835, is quite indicative of how the diversity of the orders and functions influence in different ways real participation in the liturgical actions. In any case, it is important to remember that, in empowering people to actively exercise the liturgical functions, some factors having different significance and juridical value intervene. In addition to the criteria contained in c. 835, which stem from the influence that the different sacraments have on the exercise of the worshipping functions, the habitual faculties involved, as discussed in c. 132, also have a bearing on this point. These habitual faculties are regulated as follows: in relation to confirmation, by cc. 882–887; regarding penance, by cc. 966–975; in relation to marriage, by cc. 1108–1114; and, regarding the collaboration of the lay faithful with ministry of priests, by way of *Instruction EdM,* of 15 August 1997.

The original wording of § 2 regarding the treatment of the participation of the faithful in the liturgy must be noted.[7] This is because, instead of counting on the resources proper to this sacred science to promote the participation of the faithful, using the acclamations, responses, songs, bodily gestures, etc., it limits itself to pointing, very soberly, to a general criterion. This criterion, to the extent to which the very nature of each liturgical action calls for a community celebration, will be performed whenever possible, with the assistance and the active participation of the faithful. Regarding the Holy Eucharist, in c. 899, the *CIC* specifically treats the participation of the faithful in the eucharistic celebration, while cc. 912–923 establish the rights and duties of the faithful to participate in this sacrament.

7. Cf. J.A. ABAD IBÁÑEZ-M. GARRIDO BONAÑO, *Iniciación a la liturgia de la Iglesia* (Madrid 1988), pp. 49–58.

838 **§ 1. Sacrae liturgiae moderatio ab Ecclesiae auctoritate unice pendet: quae quidem est penes Apostolicam Sedem et, ad normam iuris, penes Episcopum dioecesanum.**

§ 2. Apostolicae Sedis est sacram liturgiam Ecclesiae universae ordinare, libros liturgicos edere eorumque versiones in linguas vernaculas recognoscere, necnon advigilare ut ordinationes liturgicae ubique fideliter observentur.

§ 3. Ad Episcoporum conferentias spectat versiones librorum liturgicorum in linguas vernaculas, convenienter intra limites in ipsis libris liturgicis definitos aptatas, parare, easque edere, praevia recognitione Sanctae Sedis.

§ 4. Ad Episcopum dioecesanum in Ecclesia sibi commissa pertinet, intra limites suae competentiae, normas de re liturgica dare, quibus omnes tenentur.

§ 1. The ordering and guidance of the sacred liturgy depends solely upon the authority of the Church, namely, that of the Apostolic See and, as provided by law, that of the diocesan Bishop.

§ 2. It is the prerogative of the Apostolic See to regulate the sacred liturgy of the universal Church, to publish liturgical books and review their vernacular translations, and to be watchful that liturgical regulations are everywhere faithfully observed.

§ 3. It pertains to Bishops' Conferences to prepare vernacular translations of liturgical books, with appropriate adaptations as allowed by the books themselves and, with the prior review of the Holy See, to publish these translations.

§ 4. Within the limits of his competence, it belongs to the diocesan Bishop to lay down in the Church entrusted to his care, liturgical regulations which are binding on all.

SOURCES: §1: cc. 1257, 1260; MD 544; SCHO Monitum, 14 feb. 1958 (AAS 50 [1958] 114); SCHO Monitum, 24 iul. 1958 (AAS 50 [1958] 536); SC 22 §1; IOe 22; Paulus Pp. VI, m. p. Sacram Liturgiam, 25 ian. 1964, XI (AAS 56 [1964] 144).
§2: c. 1257; SC 36; IOe 21
§3: SC 22 §2; 36 §§3 et 4; 39; 40; IOe 40; OE 5; UR 15; Consilium ad exsequendam Constituionem de Sacra Liturgia Litt. circ., 30 iun. 1965; AG 22; GS 58; EP 3; SCDW Resp., 11 iun. 1970; SCSDW Let., 5 iun. 1976

§4: c. 1261 §2; SC 22; IOe 22; LG 26; CD 15, 35; SCRit Instr. Tres abhinc annos, 4 maii 1967 (AAS 59 [1967] 442–448); SCDW Instr. Liturgicae instaurationes, 5 sep. 1970 (AAS 62 [1970] 694)

CROSS REFERENCES: cc. 330–341, 376, 381, 387–390, 447, 455, 826, 834, 835 §1, 837, 841

COMMENTARY

Eloy Tejero

1. *Ordering of liturgy by the supreme authority of the Church*

According to the contents of cc. 834 and 837, and given the liturgy's own nature, clearly c. 838 is consistent in providing that the public ordering of the liturgical actions corresponds exclusively to the authority of the Church. In addition, taking into account the typical efficacy of the *opus salutis*, in which the Church culminates its service to all through liturgical actions, it is understandable that certain aspects of the liturgical regulations, or liturgical law, may only be ordered by the supreme authority of the Church: "Since the sacraments are the same throughout the universal Church, and belong to the divine deposit of faith, only the supreme authority in the Church can approve or define what is needed for their validity" (c. 841).

There is no doubt as to what should be understood by the expression "supreme authority" if we read cc. 330–341, in the canons' treatment of the authority of the Roman Pontiff and the Ecumenical Council. However, § 1 of c. 838 (the text of which comes from *Sacrosanctum Concilium* 22 § 1) does not mention the Ecumenical Council among the competent organs to order the liturgy. This cannot be interpreted as an omission; rather, it stems from the fact that, while ecumenical councils as outstanding as the Tridentine or Vatican II were great promoters of liturgical reforms, even these councils did not effect a true ordering of the liturgy, which was carried out by the Apostolic See even when it had been previously furthered by ecumenical councils. This way of acting, envisaged by the canon, responds to the fact that an activity as fundamental and customary as liturgy cannot remain pending, in its public ordering, on a government organ as extraordinary and infrequent as the Ecumenical Council. The same may not be said of the Apostolic See, given its condition of supreme authority, permanent and in ordinary activity, nor of the diocesan bishop, as long as he acts according to the rules of Law, to which § 1 of the canon attributes the competence in the ordering of the liturgy.

2. *Competences of the Holy See in the ordering of liturgy*

When § 2 of the canon states that it behooves the Apostolic See to order the liturgy of the universal Church, it establishes a criterion that must be understood in its distinct significance. There are liturgical principles the application of which is obligatory in the Roman rite as well as in the other rites. Among them are those related to the validity of the sacraments, which, being determined by divine institution, affect all the rites and are immutable by nature (*SC* 21). It is evident that the statements of the Holy See regarding these aspects of divine institution obligate the universal Church. No matter what the particular rite to which a specific community may belong, it will always be affected by the liturgical principles of divine institution and by the declarations of the Apostolic See referring specifically to them. The same may not be said regarding the practical rules related to the specific development of the liturgical actions, since these develop according to the autonomy of each legitimately existing rite, recognized to all with equal right and dignity (*SC* 4).

With respect to the Roman rite, the Apostolic See has developed an intense regulatory activity to fulfill the liturgical reform furthered by the Second Vatican Council (Cf. *SC* 21–40). On January 25, 1965, the *Consilium ad exsequendam Constitutionem de Sacra Liturgia*[1] was instituted; its last working meeting took place in 1970.[2] The documents written during these years have had a remarkable influence on the advancement and assimilation of the liturgical reform.[3] The same must be said of the SCRit,[4] the *SCDW*,[5] the SCSUS,[6] the *SCCong*[7] and the SCCE.[8]

But, in the field of liturgical law itself, the pontifical documents that most directly affected the operation of the reform were the Apostolic Constitution *Missale Romanum*,[9] which sets forth the general guidelines according to which the celebration of the Eucharist is adequately ordered and establishes the rules that dispose the forms of each celebration; the Apostolic Constitution *Laudis canticum*,[10] which establishes the new ordering of the Liturgy of the Hours, and the OBP, with its *Praenotanda*

1. Cf. *AAS* 56 (1964), pp. 139–144.
2. Cf. *AAS* 62 (1970), pp. 272–274.
3. Cf. circ. Letter, *Le renouveau liturgique*, June 30, 1965, in *EV*, II, pp. 408–425; Instr. *Comme le prévoit*, January 25, 1969, in *EV*, III, pp. 422–445.
4. Cf. Instr. *Inter oecumenici*, September 26, 1964, in *AAS* 56 (1964), pp. 877–900; Instr. *Tres abhinc annos*, May 4, 1967, *AAS* 59 (1967), pp. 442–448.
5. Cf. Circ. Letter *Eucharistiae participationem*, April 27, 1973, in *EV*, IV, pp. 1596–1613.
6. Cf. Instr. *Doctrina et exemplo*, December 25, 1965, in *EV*, II, pp. 514–579.
7. Cf. Circ. Letter *Opera artis*, April 11, 1971, in *EV*, IV, pp. 400–405.
8. Cf. Instr. *In Ecclesiam futurorum*, June 3, 1979, in *EV*, VI, pp. 1044–1091.
9. Dated April 3, 1969, in *AAS* 61 (1969), pp. 217–222. Cf. E. TEJERO, "Las normas y los actos de la Conferencia Episcopal de España en materia litúrgico-sacramental," in *Ius Canonicum* 32 (1992), pp. 261–300.
10. Dated November 1, 1970, in *AAS* 63 (1971), pp. 712ff.

generalia de initiatione christiana, that details the criteria to be followed in the performance of the particular rituals by the respective bishops' conferences.[11]

The liturgical sources that have lasted through the reform after Vatican II are not limited to regulating the development of the different liturgical actions, but also contain universal rules of canonical scope, including quite diverse determinations regarding the competence of the Apostolic See, the bishops' conferences, and the diocesan bishop, which, although they digress outside the *CIC*, are of obligatory knowledge for the canonists. A characteristic common to all of them is that they have put into practice the criteria suggested by Vatican II regarding the exercise of the ordering power of the liturgy by the Holy See. At the same time, they stimulated the pertinent action of the bishops' conferences to welcome local linguistic and cultural variants according to the provisions of *Sacrosanctum Concilium* 36 § 2, but without depriving the Apostolic See of its original competence in the matter (as was already provided for in *Sacrosanctum Concilium* 23), necessary to avoid the risk of introducing, within the same rite, significant unjustified differences in nearby regions..

A key element in all this regulatory activity is the competence to edit liturgical books, accurately gathered in § 2 of c. 838. That harmony of competencies to which we have just referred may be seen with greater clarity in this point. In fact, while *SC* 39 points to the opportunity for the "the competent territorial ecclesiastical authority ... to specify adaptations," it also highlights that these can only be performed "within the limits established by the official editions of the liturgical books." In other words, that the "local rituals adapted linguistically and otherwise to the needs of the different regions" may only be prepared "in accordance with the new edition of the Roman ritual" (*SC* 63, b).

Consistent with these criteria, all the liturgical reform developed since Vatican II has always been performed by the initiative of the Holy See, which, in fulfillment of its mission to order the liturgy, has always prepared the corresponding edition of each of the liturgical books, thus allowing the later and derived intervention of the bishops' conferences to make the appropriate versions and adaptations. In addition, each of these initiatives of the Holy See, as we will see later, has tried to clearly demarcate the competencies corresponding to the bishops' conferences in relation to the appropriate adaptations of each of the liturgical books.

Besides the untransferable competencies of the Apostolic See regarding the publication of liturgical books, the canon points to another competence of the Holy See in its § 2: "to review their vernacular translations." This necessary intervention of the Apostolic See is also provided for by Vatican II with a different terminology that must not be overlooked:

11. Cf. A. BUGNINI, *La riforma liturgica (1948–1975)* (Rome 1983), pp. 570ff.

Sacrosanctum Concilium 40, 1, referring to the variables introduced by the bishops' conferences, states that "adaptations which are considered useful or necessary should be submitted to the Holy See, by whose consent they may be introduced." Furthermore, *Sacrosanctum Concilium* 63, b) says that the accommodations proposed by the bishops' conferences "must first be authorised by the Holy See before they can be implemented." The juridical standing of this revision requiring permission of the Holy See is not easy to determine exactly.[12] Perhaps it might be done better after considering the competencies proper to the bishops' conferences to make the adaptations and variants of the liturgical books that are to be reviewed.

The last competence of the Holy See mentioned in § 2 of this canon, is "to be watchful that liturgical regulations are everywhere faithfully observed." This vigilance, which tends to avoid abuses and to root them out wherever they are discovered, is exercised by the *CDWDS*, which also acts in the other powers of the Apostolic See mentioned in § 2 of c. 838 (cf. *PB*, arts. 62–70).

3. *Competences of bishops' conferences*

Regarding the competence of the bishops' conferences examined in § 3, this section refers to the limits established in the liturgical books themselves regarding the exact determinations of their content.[13] This results in the need to turn to such extravagant regulatory sources regarding the *CIC* that are in force today.[14]

In relation to the Roman Missal, the GIRM welcomes a criterion that it maintains in its different sections: the reform of this liturgical book will become effective with the opportune intervention of the bishops' conferences (no. 10). The GIRM itself mentions two basic reasons for such intervention: "The use of the vernacular in the liturgy is an instrument ... by which the catechesis of the mystery contained in the celebrations is more clearly expressed" (no. 13). Furthermore, "In accord with the Constitution on the Liturgy (*SC*, 39 and 63, b), each bishops' conference has the power to lay down norms for its own territory that are suited to the traditions and character of peoples, regions, and various communities" (no. 6).

Consistent with this criterion, the GIRM determines that "it is up to the Conference of Bishops to adapt the actions and postures described in

12. Cf. J. MANZANARES, "De Conferentiae Episcopalis competentia in re liturgica in schemate codificationis emendata," in *Periodica* 70 (1981), pp. 469–497.

13. Cf. J. CALVO, "Las competencias de las Conferencias Episcopales y del Obispo diocesano en relación con el 'munus sanctificandi,'" in *Ius Canonicum* 24 (1984), pp. 645–673.

14. Cf. E. TEJERO, "Las normas y los actos...," cit., pp. 264–273.

the *Ordo Missae Romanae* to the customs of the people. But the Conference must make sure that such adaptations correspond to the meaning and character of each part of the celebration" (no. 21). The same criterion applies with respect to the matter with which the sacred vessels are prepared (no. 290), to the color of the sacred vestments (no. 308), to the permission to proclaim only two readings on Sundays or feast days (no. 318), to the possibility of indicating some adaptations in the readings contained in the approved Lectionary (no. 325) and to the possibility of choosing Masses for different needs throughout the year (no. 331).

Regarding the "Book of the Hours," the above-mentioned Apostolic Constitution *Laudis canticum* determines: "Let the Episcopal Conferences see to it that editions of the Liturgy of the Hours be prepared in the vernacular tongue and, after the Holy See grants its approval and confirmation, let them determine the day in which these editions can or must be used in whole or in part" (no. 8). In addition, it provides that "the Bishops' Conferences may prepare other texts (readings) consistent with the region's customs and tradition" to be included in the Lectionary *ad libitum*, as a supplement. "These texts must be taken from Catholic writers outstanding for their doctrine and the sanctity of their customs" (no. 162). Something similar is said regarding the hymns: "The Bishops' Conferences have the authority, for the celebration in the vernacular tongue, to adapt the Latin hymns to the structure of the language and also to introduce new compositions of hymns, as long as they are consistent with the spirit of the Hour, the time or the feast day" (no. 178). Corresponding references are made about the competence of the bishops' conferences to adapt the formulas of the prayers because of the necessities of the universal Church (nos. 184–187) and regarding other possible adaptations (nos. 188–193).

With respect to the specific rituals, addressing the needs of each region, the *Sacrosanctum Concilium*, 63, b) states: "The competent territorial ecclesiastical authority ... shall forthwith prepare, in accordance with the new edition of the Roman Ritual, local rituals adapted linguistically and otherwise to the needs of the different regions. These rituals, on authentication by the Apostolic See, are to be followed in the regions in question. But in drawing up those rituals or particular collections of rites, the instructions prefixed to the individual rites in the Roman Ritual, whether they be pastoral and rubrical or whether they have a special social import, shall not be omitted."

Although this text does not mention explicitly the bishops' conferences because, when the *Sacrosanctum Concilium* was written, Vatican II had not yet worked on the organizational details that would later support the existence and the functions of the Conferences, there is no doubt whatsoever, once concluded the Council, that "the competent territorial ecclesiastical authority" is the bishops' conference. The OBP so determines in its *Praenotanda generalia de initiatione christiana*, of 1973, which enumerates the following competencies of the bishops' conferences in relation to

the preparation of the particular rituals: *a*) to consider what may be admitted of the traditions and customs of each people and propose to the Holy See the adaptations considered useful and necessary to be introduced with its approval; *b*) to maintain the elements of the particular rituals already existent as long as they may be brought into harmony with the Constitution *Sacrosanctum Concilium* and the needs of today; *c*) to prepare the publication of texts accommodated to the diverse tongues and cultures, adding the recommended songs; *d*) to adapt and complete the *Praenotanda* contained in the Roman ritual, so that the ministers may understand well the significance of the rites and may complement their effect; *e*) to order the material in such a way that it may seem more convenient for pastoral use, in the preparation of the liturgical books entrusted to the care of the bishops' conferences (OBP, no. 30).

In specific references to each of the sacraments, we find these competencies attributed to the bishops' conferences. Regarding the baptism of children, it is determined that "when the Roman ritual presents various formulas *ad libitum*, the particular rituals may add other formulas of the same type ... The Conferences should try to encourage the musical experts and help them to accompany the melodies of the liturgical acts" (OBP, nos. 32–33). In the case of confirmation, the bishops' conferences may adapt the formulas for the renewal of baptismal promises and introduce another form for the minister giving the sign of peace (RConf, nos. 18–17). With regard to the baptism of adults, it behooves the bishops' conferences: *a*) to determine a way of receiving the *Sympathizers* of the faith, even if they do not fully believe yet (RCIA, nos. 12, 13, 65); *b*) to introduce in the *Ordo ad catechumenos faciendos* a first exorcism and a first renunciation of the gentile worships (RCIA, nos. 65, 79, 80); *c*) to determine if the gesture of making the sign of the Cross on the forehead, whenever touching does not seem decent according to the customs of the country, may be made over the forehead (RCIA, nos. 65, 83); *d*) to decide if a new Christian name should be imposed on the new catechumens or if the name given by non-Christian religions is accepted (RCIA, nos. 65, 88); *e*) to admit auxiliary rites to signify the reception into the community, as the donation of salt or some symbolic act, such as presenting a cross or a sacred medal (RCIA, nos. 65, 89); *f*) to establish, for the period of the catechumenate, in addition to the customary rites, the rites of transition from one time of the catechumenate to another, such as the *traditio Symboli* or the *traditio orationis dominicae*, the rite of the *ephphetha* or the anointing with the catechumens oil (RCIA, nos. 65, 106–129).

In view of the concrete competencies that the liturgical books attribute to the bishops' conferences, we are in the best of positions to determine the juridical scope corresponding to the review of these variants by the Apostolic See before the particular rituals are published. To understand better the treatment given by the doctrine to this question, it is important to consider the influence exercised by the opinions expressed

immediately after the publication of *Sacrosanctum Concilium.*[15] Despite the fact that this first council document, upon referring to "the competent territorial ecclesiastical authority" (*SC* 22 § 2; 39; 63, b), could not anticipate the criteria that the Council would later state regarding the nature and functions of the bishops' conferences, and about so many other aspects of the ecclesiastical organization, some authors did not hesitate to say that the then unknown "competent territorial ecclesiastical authority" could act, in some cases, without the approval of the Apostolic See[16] and, in cases where it had to request approval or confirmation from the Holy See according to the provisions set forth in *Sacrosanctum Concilium,* 36 § 3 and 63, b. Because it interpreted that the "competent territorial ecclesiastical authority" would have real legislative power in the liturgical matters previously mentioned, such approval or confirmation would imply a simple examination by the Holy See that would not suppose any exercise of the legislative power, carried out only by the "competent territorial ecclesiastical authority."[17] In this way, it would be the Holy See that would see its regulatory action limited and not the cited territorial authority, although *Sacrosanctum Concilium* 22 specifically says of this authority that its actions will take place "within the determined limits."

Today, when all the steps of the liturgical reform have been completed and cc. 447 and 455 have typified the canonical configuration and the regulatory competencies of the bishops' conferences, there does not seem to be any foundation to continue repeating the foregoing appraisals. It is obvious that the scope of the interventions of the bishops' conferences, being more or less broad, always comes, with regard to the liturgical books, from an earlier initiative of the Holy See. The preparation of each of these books determines a later and derived action of the Conferences to adapt liturgical norms given with universal character. This form of action, completely consistent with the principles established by *Sacrosanctum Concilium* 3 and 4, regarding the respect due to each of the rites, and by no. 23, about the importance of guaranteeing the organic development of the Latin rite when making the reform, and of avoiding any significant differences of rites in nearby regions, makes unsustainable, in our view, the opinions previously mentioned. This is because the intervention of the Holy See corroborates and strengthens the actions of the bishops' conference, which come after and are derived from the fundamental earlier action of the Apostolic See. The specific nature of these interventions of the bishops' conferences explains why c. 838 § 1 does not mention them among the organs competent to order the liturgy.

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15. Cf. I. GORDON, *Liturgia et potestas in re liturgica* (Rome 1966), pp. 147–156.
16. Cf. ibid., p. 149.
17. Cf. ibid., pp. 150–152.

4. *Norms given by the diocesan bishop*

In contrast with c. 835 § 1, which examines the exercise of the sanctifying function by the bishops, c. 838 § 4 affirms the power of the diocesan bishop to issue obligatory norms about liturgical matters within the limits of his competence.[18] In this sense, *Lumen gentium* 26 states: "Every legitimate celebration of the Eucharist is regulated by the bishop, to whom is confided the duty of presenting to the divine majesty the cult of the Christian religion and of ordering it in accordance with the Lord's injunctions and the Church's regulations, as further defined for the diocese by his particular decision."

By the very nature of their office, the diocesan bishops are "the principal dispensers of the mysteries of God, and it is their function to control, promote and protect the entire liturgical life of the Church entrusted to them ... They should aim to make of one mind in prayer all who are entrusted to their care, and to ensure their advancement in grace through the reception of the sacraments and that they become faithful witnesses to the Lord ... Let them so sanctify the Churches entrusted to them that the mind of the universal Church of Christ may be fully reflected in them" (*CD* 15).

18. Cf. J. CALVO, "Las competencias...," cit., pp. 652–657, 663–667; J.M. DÍAZ MORENO, "El Derecho litúrgico diocesano postcodicial," in *Derecho particular de la Iglesia en España* (Salamanca 1986), pp. 153–192.

839 **§ 1. Aliisve quoque mediis munus sanctificationis peragit Ecclesia, sive orationibus, quibus Deum deprecatur ut christifideles sanctificati sint in veritate, sive paenitentiae et caritatis operibus, quae quidem magnopere ad Regnum Christi in animis radicandum et roborandum adiuvant et ad mundi salutem conferunt.**

§ 2. Curent locorum Ordinarii ut orationes necnon pia et sacra exercitia populi christiani normis Ecclesiae plene congruant.

§ 1. The Church carries out its sanctifying office by other means also, whether by prayer, in which it asks God to make Christ's faithful holy in the truth, or by works of penance and of charity, which play a large part in establishing and strengthening in souls the Kingdom of Christ and contribute to the salvation of the world.

§ 2. Local Ordinaries are to ensure that the prayers and the pious and sacred practices of the christian people are in full harmony with the laws of the Church.

SOURCES: § 1: *MD* 583–587; *SC* 12, 13; *LG* 12
§ 2: cc. 1259–1261; SCHO Decr. *Iam olim*, 26 maii 1937 (*AAS* 29 [1937] 304–305); SCHO Decr. *Quaesitum est*, 18 iun. 1938 (*AAS* 30 [1938] 226–227); SCHO Decr. *In generali*, 12 dec. 1939 (*AAS* 32 [1940] 24); *MD* 587; *SC* 13

CROSS REFERENCES: cc. 114 §§ 1 et 2, 211, 216, 222, 225, 229, 246 § 3, 258, 276 § 2,5°, 278, 282, 283, 278, 282, 283, 298, 299 § 1, 312 § 2, 387, 396–398, 528 § 2, 529, 577, 640, 663 § 3, 673–676, 678, 702 § 2, 713, 719 § 1, 731, 785, 823–825, 826 § 3, 827, 834–838, 909, 919, 937, 942, 1249–1253, 1254 § 2, 1299–1310

COMMENTARY

Eloy Tejero

This canon, complementing the contents of cc. 834–838, examines the non-liturgical means that help the Church carry out its sanctifying function: the prayers, penance and works of charity that sanctify the faithful in truth and help the Kingdom of Christ take root in the souls.

The Church considers each person's personal and private piety not only praiseworthy but also necessary to promote the virtues of the spiritual life, the intense desire to serve the Kingdom of Christ and to overcome the difficulties and dangers that always arise in the path of the Christian life. Thus, the equilibrium with which the mystical Body of Christ grows on earth implies that each of its members, through personal contemplation, loyal obedience to the precepts, and actions saturated with the Christian spirit, will want to convert all his/her life into committed sanctity. This sanctifying value of the very existence of Christ's disciples means that "not only through her ministers but with the help of the faithful individually, who have imbibed in this fashion the spirit of Christ, the Church endeavors to permeate with this same spirit the life and labors of men and women—their private and family life, even their social, economic and political life—that all who are called God's children may reach more readily the end He has proposed for them."[1]

This call to sanctify life itself comes from the priesthood of the faithful, which prepares them so "that through all the works of Christians they may offer spiritual sacrifices ... Therefore all the disciples of Christ, persevering in prayer and praising God (cf. Acts 2:42–47), should present themselves as a sacrifice, living, holy and pleasing to God (cf. Rom 12:1)" (*LG* 10). In keeping with this doctrine, other Vatican II texts highlight the fundamental value for all the faithful and for the priests of imitating Christ in the loyal fulfillment of the Father's will: "This unity of life cannot be brought about merely by an outward arrangement of the works of the ministry nor by the practice of spiritual exercises alone, though this may help to foster such unity. Priests can, however, achieve it by following in the fulfillment of their ministry the example of Christ the Lord, whose mission was to do the will of Him who sent him that he might perfect his work" (*PO* 14). And, regarding the other faithful, *Lumen gentium* 41 states: "Accordingly, all Christians, in the conditions, duties and circumstances of their life and through all these, will sanctify themselves more and more if they receive all things with faith from the hand of the heavenly Father and cooperate with the divine will, thus showing forth in that temporal service the love with which God has loved the world."

In a direct reference to the life of personal prayer that must be followed by priests, but that is equally valid for the rest of the faithful, *Presbyterorum Ordinis* 18 refers to frequent confession, "prepared for by a daily examination of conscience ... Under the light of a faith that has been nourished by spiritual reading, priests can diligently search for the signs of God's will and the inspirations of his grace in the varied events of life. In this way they will become daily more docile in the demands of the mission they have undertaken in the Holy Spirit. They always find a wonderful example of such docility in the Blessed Virgin Mary ... priests should

1. *MD*, pp. 534–536.

always venerate and love her with a filial devotion and worship, as the Mother of the supreme and eternal Priest, as Queen of Apostles, and as protectress of their ministry. As a help towards faithful fulfillment of their ministry priests should love to talk daily with Christ the Lord in their visit to the most Blessed Sacrament and in their personal devotion to it. They should be glad to take time for spiritual retreat and should have a high regard for spiritual direction. In various ways, in particular through the approved practice of mental prayer and the different forms of vocal prayer which they freely choose to practice, priests are to seek and perseveringly ask of God the true spirit of adoration. By this spirit they themselves, and with them the people entrusted to their care, will unite themselves with Christ the Mediator of the New Testament, and will be able as adopted sons to cry, 'Abba! Father!' (Rom 8:15)."[2]

It must be taken into account that, although the pious exercises are not the liturgy, the Church nevertheless also exercises its sanctifying function through them. Thus, the canon considers all the actions herein referred to as acts of the Church, even if they do not have the scope of public actions, as liturgical acts do. "These exercises of piety have brought a wonderful increase in faith and supernatural life to the Church militant upon earth ... Wherefore, the Church not merely approves these pious practices, which in the course of centuries have spread everywhere throughout the world, but makes them her own, as it were, and by her authority commends them. They spring from the inspiration of the sacred liturgy and if they are performed with due propriety and with faith and piety, as the liturgical rules of the Church require, they are undoubtedly of the very greatest assistance in living the life of the liturgy."[3]

Given this ecclesiastical dimension of prayer even if not done in liturgical fashion, the *CIC* reiterates in different places its necessity, in terms that express quite well their contribution to building up the Church throughout history. Therefore, c. 246 § 3 presents prayer as necessary for seminarians; c. 276 § 2,5° for the clergy; cc. 577, 663 § 3 and 673 for the religious; c. 719 § 1 for members of the secular institutes. Parish priests must recommend prayer, according to c. 528 § 2, and, as stated by c. 909, the priest must pray before celebrating the Holy Mass. Canon 937 says that churches must be open during the day to allow the faithful to pray before the Blessed Sacrament, and c. 942 refers to prayer before the exposition of the Blessed Sacrament.

The works of penance mentioned in c. 839 have this same ecclesiastical dimension because "just as Christ carried out the work of redemption in poverty and oppression, so the Church is called to follow the same path if she is to communicate the fruits of salvation to men ... Likewise, the

2. Cf. *MD*, pp. 584–585 and *CD*, 33.
3. *MD*, p. 570.

Church, although she needs human resources to carry out her mission, is not set up to seek earthly glory, but to proclaim humility and self-denial, and this by her own example ... Similarly, the Church encompasses with her love all those who are afflicted by human misery and she recognizes in those who are poor and who suffer, the image of her poor and suffering Founder. She does all in her power to relieve their need and in them she strives to serve Christ ... The Church, 'like a stranger in a foreign land, presses forward amid the persecutions of the world and the consolations of God,' announcing the cross and death of the Lord until he comes (cf. 1 Cor 11:26)" (*LG* 8).

Consistently with this spirit, the Church encourages its faithful to live an interior individual penance as well as the external and social penance. Thus, its provisions regarding the duty of the faithful to satisfy the Eucharistic fast (c. 919) and other forms of external penance examined in cc. 1249–1253, which intend to educate and encourage the faithful to practice other works of penance in a personal and generous way. As for the works of charity, they are so important for the edification of the Church in the world. Besides c. 839, other canons also reiterate the need for all the faithful to practice charity even if manifested in varied ways, according to the diversity of the vocations existing in the Church (cf. cc. 222, 282, 383, 387, 529, 640, 702 § 2, 785, 1254 § 2). This also applies to the works of the apostolate, mentioned in cc. 211, 216, 222, 225, 229, 258, 673–675, 677, 678, 713, 731.

Given the inherent ecclesiastical dimension of the works of prayer, penance and charity, it is understandable also that they have a profound influence on the creation of juridical persons in the Church, who can only be constituted as such if they seek the works of piety, apostolate or charity, both spiritual and temporal, as ends that transcend the end of man (c. 114 §§ 1 and 2). This is equally true regarding the canonical rules about the associations: c. 278, which is related to the right of the secular clergy to associate, and to the estimation in which associations promoting the search for sanctity in the exercise of the ministry and contributing to the union of all the clergy among themselves and with their own bishop must be held. Canon 298 expresses in this way the raison d'être of the different associations of the institutes of consecrated life and of the societies of apostolic life. The partners "strive with a common effort to foster a more perfect life, or to promote public worship or Christian teaching. They may also devote themselves to other works of the apostolate, such as initiatives for evangelization, works of piety or charity, and those which animate the temporal order with the Christian spirit." These objectives are also, according to c. 299 § 1, the basis of the right of the faithful to constitute associations. Finally, with respect to the ecclesiastical value of the works of piety, penance, and charity, the intended aims of pious wills and of pious foundations, which are the subject of cc. 1299–1310, must also be taken into account.

In the light of the primary value of the prayers and of the pious practices of the Christian people, it is understandable that c. 839 § 2 makes note of the duty of the local ordinaries to make sure that such practices conform to the rules of the Church. In relation to this point, we find the provisions of cc. 823–827, which concern the need for authorization from the diocesan bishop or the local ordinary to publish writings or books related to the faith or to customs, especially c. 826 § 3: "Prayer books, for either the public or the private use of the faithful, are not to be published except by permission of the local Ordinary." Also related to this duty of the local ordinaries are the provisions set forth in c. 312 § 2 regarding the need for permission from the diocesan bishop to create a public association of faithful. It is obvious that another instrument of the good governing of the bishop, in relation to the subject matter examined in c. 839, is the canonical visit regulated in cc. 396–398.

PARS I
De sacramentis

PART I
The Sacraments

840 **Sacramenta Novi Testamenti, a Christo Domino instituta et Ecclesiae concredita, utpote actiones Christi et Ecclesiae, signa exstant ac media quibus fides exprimitur et roboratur, cultus Deo redditur et hominum sanctificatio efficitur, atque ideo ad communionem ecclesiasticam inducendam, firmandam et manifestandam summopere conferunt; quapropter in iis celebrandis summa veneratione debitaque diligentia uti debent tum sacri ministri tum ceteri christifideles.**

The sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church. As actions of Christ and of the Church, they are signs and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about. Thus they contribute in the most effective manner to establishing, strengthening and manifesting ecclesiastical communion. Accordingly, in the celebration of the sacraments both the sacred ministers and the other members of Christ's faithful must show the greatest reverence and due care.

SOURCES: c. 731 §1; SC 6, 7, 14, 26-28, 59; LG 7, 14; UT 911

CROSS REFERENCES: cc. 834-838

COMMENTARY

José T. Martín de Agar

The sacraments are the center of the liturgy of the Church (SC, 6). The objective of this canon is to explain the canonical regulations about the sacraments, which are found in this part of the *CIC*, distinguishing them from, and at the same time linking them to, other perspectives concerning the study of the sacraments.

The sacraments are, in fact, the object of different aspects of theology, as well as of other branches of canonical science, mainly of the fundamental theory, which intends to explain the sacramental bases of canon law. This is insofar as, on the one hand, the Church is "by her relationship with Christ, both a sacramental sign and an instrument of intimate union with God" (*LG* 1; cf. 9 c), to which all men are called, and on the other, the sacred nature and the organic structure of the priestly people of God are "brought into operation through the sacraments and the exercise of virtues" (*LG* 11), with the Word, who is always with them.

For this reason the present canon, inspired in the *SC* 7 and 59, highlights in the first place the nature and efficacy of the sacraments: "Christ's redeeming actions" which He instituted and continues to perform through his mystical Body, the Church, to whom they were entrusted to be celebrated as acts of worship that signify and bring about the Redemption; thus "Christ acts each day to save us, in the sacraments and in His holy sacrifice"[1].

Because they are actions of Christ, essential elements of the being and mission of the Church, the sacraments are also the foundation of canon law, insofar as they manifest and bring about the basic ordering established by Jesus Christ to deliver the means of salvation to men through the Church, which in turn participates in and exercises the *munera Christi* by means of the sacraments[2].

As the *Catechism of the Catholic Church* explains, "the sacraments are 'of the Church' in the double sense of 'by her' and 'for her'. They are 'by the Church,' for she is the sacrament of Christ's action at work in her through the mission of the Holy Spirit. They are 'for the Church' in the sense that 'the sacraments make the Church'" (*CCC*, 1118). They are the cause and the sign of the ecclesiastical communion, and, therefore, ultimate foundation of the social relationships, conditions and positions of juridical content on several levels[3].

All of this demands juridical regulation of those external and social aspects of the sacraments that include demands for justice. The part of the Code which opens with this canon refers briefly to the disciplinary

1. PIUS XII, Enc. *Mediator Dei*, AAS 39 (1947) p. 533.
2. Cf. J. HERVADA, "Las raíces sacramentales del derecho canónico", in *Vetera et Nova*, II (Pamplona 1991), pp. 855–892; K. MÖRSDORF, "Wort und Sakrament als Bauelemente der Kirchen verfassung", in *Schriften zum Kanonischen Recht* (Paderborn 1989), pp. 46–53; E. MOLANO, *Introducción al estudio del Derecho Canónico y del Derecho Eclesiástico del Estado* (Barcelona 1984), pp. 81–91; idem. "Dimensiones jurídicas de los sacramentos", in *Estudios de Derecho Canónico y Derecho Eclesiástico en homenaje al profesor Maldonado* (Madrid 1983), pp. 439–448.
3. P. LOMBARDÍA, *Lecciones de Derecho canónico* (Madrid 1984), p. 78; A. CATTANEO, *Questioni fondamentali della canonistica nel pensiero di Klaus Mörsdorf* (Pamplona 1986), pp. 62, 114–124, 160–177, 236–237; A. MONTAN, "Liturgia-Iniziazione cristiana", in *Il Diritto nel mistero della Chiesa*, III, 2nd ed. (Rome 1992), pp. 45–47.

aspects of the *celebration* of the sacraments[4], summarizing its constitutional basis in the first canon devoted to each of them[5] and leaving aside the strictly ritual aspects, which, as c. 2 says, are regulated by liturgical law, contained in the books and ritual orderings (cf. c. 846).

But it should be taken into account that there is a continuity between the Code's regulation of the sacraments, which refers to their valid and lawful celebration[6], and the corresponding liturgical laws, which determine the rites. On the one hand, because, as c. 2 states, the liturgical rules cannot prevail over those established in the canons, which is the reason why it was necessary to introduce upon the promulgation of the Code some changes in the rituals[7]. On the other hand, the veneration and diligence required by the celebration of the sacraments is essentially brought about in the faithful observance of the liturgical laws (cf. c. 846 § 1).

4. The Code, in accordance with the teachings of Vatican II, prefers the term *celebrare* in order to stress the community aspect of the church's worship; elsewhere the Code employs the terms *conficere, dispensare, administrare* or *recipere*, to show the different functions which the faithful play in the liturgy, especially those which manifest the essential distinction between the common and the hierarchical priesthood: cf. *SC* 7, 27; *Comm.* 15 (1983) pp. 170–171, 174–175.

5. Cf. cc. 849, 879, 897, 959, 998, 1008, 1055.

6. Cf. A. MONTAN, *Liturgia-Iniziazione...*, cit., pp. 21–24.

7. Cf. SCSCD, Decr. *Promulgato Codice*, 12.IX.1983, in *Notitiae* 19 (1983), pp. 540–555, also in EV 9/394–408.

841 **Cum sacramenta eadem sint pro universa Ecclesia et ad divinum depositum pertineant, unius supremae Ecclesiae auctoritatis est probare et definire quae ad eorum validitatem sunt requisita, atque eiusdem aliusve auctoritatis competentis, ad normam can. 838, §§ 3 et 4, est decernere quae ad eorum celebrationem, administrationem et receptionem licitam necnon ad ordinem in eorum celebratione servandum spectant.**

Since the sacraments are the same throughout the universal Church, and belong to the divine deposit of faith, only the supreme authority in the Church can approve or define what is needed for their validity. It belongs to the same authority, or to another competent authority in accordance with can. 838 §§ 3 and 4, to determine what is required for their lawful celebration, administration and reception and for the order to be observed in their celebration.

SOURCES: c. 733 § 1; *MD* 539

CROSS REFERENCES: cc. 331, 336, 392, 749, 835 § 1, 838

COMMENTARY

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The sacraments have been "instituted by Christ the Lord and entrusted to the Church" (c. 840); this means that the essential elements of each sacrament are the fruit and effect of the redeeming will of Christ and that the Church receives them as a deposit that shapes its very life and mission.

Essentially the sacraments are those actions of Christ to which He himself has wished to tie the sanctifying efficacy of his life, death and resurrection, thus manifesting it to His Church so that by performing these actions in His name, the Church may apply to each man the fruits of his redemption. Therefore, whatever there is in the sacraments of divine institution is part of the immutable deposit received by the Church from its Founder and the Church cannot alter it, "The sacred liturgy does, in fact, include divine as well as human elements. The former, instituted as they have been by God, the Divine Redeemer, cannot be changed in any way by men."[1]

1. PIUS XII, Enc. *Mediator Dei*, *AAS* 39 (1947) p. 541; cf. *SC*, 21.

But, "(a)s she has done for the canon of Sacred Scripture and for the doctrine of the Faith, the Church ... has gradually recognized this treasure received from Christ and as the faithful steward of God's mysteries, has determined its 'dispensation'" (CCC, 1117). The canon under discussion refers logically to this mission of recognition and dispensation that the Church has received, and its objective is to demarcate the competencies regarding such a mission, explaining the reasons for this demarcation: the sacraments are the same throughout, and for, all the Church. For this reason, the norms related to its valid dispensation, insofar as they concern the custody and transmission of its essential elements, are the exclusive province of the supreme authority (the Roman Pontiff and the College of Bishops).

The same authority that is the foundation of the unity of the Church and enjoys in it the charisma of infallibility (*LG* 18, 22–25), to teach all the faithful the dogmatic aspects of the sacraments, must be the one that dictates the norms of action related to those aspects (cc. 331, 336, 749; c. 669 *CCEO*).

The supreme authority of the Church therefore has *exclusive competence* to determine anything that refers to the valid celebration of the sacraments, on which depends the very edification of the Church, its own identity and the aspects that make it up and express it (unity, sanctity, catholicity, apostolicity). No other authority can, therefore, add or take away anything that has been established by the supreme authority regarding the necessary and adequate requirements for the validity of each sacrament (matter, form, ministry and subject); "regarding the validity of the sacraments, there is no plurality of regulations, nor is decentralization possible."[2] This competence is habitually and ordinarily exercised by the Roman Pontiff, through the competent organs of the Roman Curia, mainly through the Congregations of the Doctrine of the Faith and Divine Worship, and the regulation of the sacraments (*PB* 48ff, 62ff), and solemnly and extraordinarily by the College of Bishops in an Ecumenical Council.

On the other hand, regarding the requirements for legality and the rites that must be observed in the celebration of the sacraments, the competence of the supreme authority does not exclude the competence of other lower, local or individual, authorities. These must be meshed in orderly fashion according to the law; specifically, c. 841 refers us to §§ 3 and 4 of c. 838, which establish the competence in liturgical matters of bishops' conferences, and of the diocesan bishops in the Church entrusted to him.

Due to the close relationship between these dogmatic, disciplinary and liturgical elements, the Holy See is responsible for establishing the universal regulation of the sacraments (which are found in this part of the

2. T. Rincón-Pérez, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 467.

CIC for the Latin Church and, for the Eastern Churches, in tit. XVI of the *CCEO*), publishing liturgical books, reviewing their translation and being watchful that all the norms related to these matters are faithfully observed (cf. c. 838 § 2; *PB* 48ff, 62ff).

The bishops' conferences are responsible for the vernacular translations of the sacramental rituals and their adaptation, within the limits indicated in the rituals themselves, to the local customs, traditions and mentality (cf. *SC* 22 § 2, 37–39). This must be done so that this liturgical diversity may manifest the catholicity of the Church (cf. CCC, 1208), taking into account that "the criterion which assures unity in the multiformity of the liturgical traditions is the fidelity to the apostolic tradition, that is: the communion in the faith and the sacraments received from the apostles" (CCC, 1209); the Holy See must review in advance the adapted versions of the liturgical books.[3]

It behooves the diocesan bishop, *sacerdos magnus sui gregis* (*SC* 41), within the general, ordinary and proper competence with which he governs his diocese, under the authority of the Roman Pontiff (c. 381), to be watchful of the faithful observance of the universal laws (c. 392) promoting and ordering the liturgical worship in general and specifically the correct celebration of the sacraments in his diocese, by means of norms that are obligatory for all (cc. 387, 838 §§ 1 and 4).

3. Regarding the translation of the essential formulas of the sacraments cf. SCDF, *Declaratio*, January 25, 1974, *AAS* 66 (1974) p. 661; cf. also SCHO, *Monitum*, July 24, 1958, *AAS* 50 (1958) p. 536.

842 **§ 1. Ad cetera sacramenta valide admitti nequit, qui baptismum non recepit.**

§ 2. Sacramenta baptismi, confirmationis et sanctissimae Eucharistiae ita inter se coalescunt, ut ad plenam initiationem christianam requirantur.

§ 1. A person who has not received baptism cannot validly be admitted to the other sacraments.

§ 2. The sacraments of baptism, confirmation and the blessed Eucharist so complement one another that all three are required for full christian initiation.

SOURCES: § 1: c. 737 § 1
§ 2: *SC* 71; OBP *Prae* gen., 2; PAULUS Pp. VI, Ap. Const. *Divinae consortium naturae*, 15 aug. 1971 (*AAS* 63 [1971] 657); RCIA *Prae*, 34 et 36

CROSS REFERENCES: cc. 849, 851,1°, 864–866, 879, 891, 897, 913

COMMENTARY

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1. The sacraments retain an organic order among themselves that is centered and culminates in the Eucharist (CCC, 1211). In this order, baptism is "the gateway to life in the Spirit ('vitae spiritualis ianua'), and the door which gives access to the other sacraments" (CCC, 1213, cf. c. 849); it gives birth to the life of grace in the Church, in "which people enter through baptism as through a door" (*LG* 14) and are constituted in the Church as persons (c. 96).

Thus, while all are called and are capable of receiving baptism (c. 864), and if they are well disposed, have the right to receive it, whoever is not baptized cannot validly receive the other sacraments; simply because they are incapable, since they have not yet been regenerated in Christ, and do not belong to the visible communion of the Church and have not been destined (consecrated) for Christian worship. A supernatural life cannot grow and develop in them because they have not yet been initiated.

The norm set forth in § 1 states a dogmatic truth, but at the same time establishes a prohibition that may be considered as penally sanctioned according to specific cases, in cc. 1365 (*communicatio in sacris*

prohibited), 1376 (profanation), 1379 (simulation of the sacraments), 1389 § 2 (culpable negligence in ministerial action)

Baptism, confirmation and the Eucharist are the sacraments of the Christian initiation, through which life in Christ and incorporation to the Church reach their maturity and fullness; the other sacraments have, on the other hand, the purpose of restoring or strengthening that life in particular circumstances and of assigning functions and ministries necessary for the Church's social life.

Thus, the three sacraments of Christian initiation form one unit in such a way that they complement one another, since only a person who has received the three sacraments participates in the death and resurrection of Christ, receives the effusion of his Spirit and is nourished by the Communion of the Body and Blood of the Lord, the covenant of eternal life.[1]

In fact, when the person receiving these sacraments is an adult, these three sacraments, after the necessary catechesis (cc. 851,1°, 865), are received in only one liturgical celebration according to their sequential order: baptism, confirmation and the Eucharist (cc. 833,2°, 866). In the case of children who have not reached the age of reason (cf. c. 852 § 1), the Latin Church and the Eastern Churches follow different individual traditions: "In the Eastern Rites the Christian initiation of infants also begins with Baptism followed immediately by Confirmation and the Eucharist, while in the Roman rite it is followed by years of catechesis before being completed later by Confirmation and Eucharist, the summit of their Christian initiation" (CCC, 1233; *CCEO*, cc. 695, 710).

1. Cf. TERTULLIAN, *De resurr. mortuorum*, VIII, 3.

843 **§ 1. Ministri sacri denegare non possunt sacramenta iis qui opportune eadem petant, rite sint dispositi, nec iure ab iis recipiendis prohibeantur.**

§ 2. Animarum pastores ceterique christifideles, pro suo quisque ecclesiastico munere, officium habent curandi ut qui sacramenta petunt debita evangelizatione necnon catechetica institutione ad eadem recipienda praeparentur, attentis normis a competenti auctoritate editis..

§ 1. Sacred ministers may not deny the sacraments to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them.

§ 2. According to their respective roles in the Church, both pastors of souls and the other members of Christ's faithful have a duty to ensure that those who ask for the sacraments are prepared for their reception. This should be done through proper evangelisation and catechetical instruction, in accordance with the norms laid down by the competent authority.

SOURCES: § 1: cc. 467, 468, 682
§ 2: *SC* 19; *PO* 4; *GCD*; *UT* 911, 921

CROSS REFERENCES: c. 213

COMMENTARY

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1. This canon correlates with c. 213, which formulates the fundamental right of the faithful "to receive in abundance the help of the spiritual goods of the Church, especially that of the word of God and the sacraments from the pastors" (*LG* 37 a). On the one hand, the canon under discussion establishes the duty of the pastors to dispense the sacraments, which are an important part of such help, and on the other hand, it summarizes the general conditions for exercising of the right to the sacraments and the duty to administer them.

This right and duty constitute a fundamental juridical expression of the relationship between the hierarchy and the people, and of the reciprocal system linking the common priesthood and the ministerial priesthood (*LG* 10), since "the sacred nature and organic structure of the priestly

community is brought into operation through the sacraments and the exercise of virtues" (*LG* 11 a).

In short, pastors exist in the Church to minister to its flock, making present Christ the Head, Eternal Pastor and Only Priest to the Church. Therefore, in practical terms, their main business must be to organize the pastoral activity, that is, its ministry, in such a way that the faithful may participate fully in the means of redemption that Christ entrusted to His Church (*LG* 18). Hence, "the ecclesiastical organization must be structured and act to satisfy, as much as possible, the interest of the faithful in relation to the Word and the sacraments."[1]

To avoid leaving the right to the sacraments as a formal statement, it is necessary to include possible means so that each faithful may exercise this right. In this matter the sense of pastoral justice is quite important considering that, because of the characteristics and personal aspects that are intrinsic to the sacraments, it would be very difficult to make this right effective by calling on the protection of the authority. Most important for facilitating its exercise is the preparation necessary to receive the sacraments fruitfully, to which § 2 of this canon refers. Taken as a whole, it is evident from this canon that, as a result of the right of the faithful to the sacraments (of the catechumens to baptism), the pastors have the duty not only of administering them when the faithful fulfill the requirements, but also of facilitating the means by which they may fulfill those requirements and may exercise their right to receive them. This catechetical responsibility, although applied mainly to the pastors, touches all those who, for different reasons, acquire responsibilities in the Christian formation of the faithful (parents, catechists, godparents).[2]

2. The opportunity, the dispositions, and the juridical impediments mentioned vary according to the nature and the function of each sacrament in the life of the Church and in the life of each Christian, and are determined in the specific normative related to each sacrament; thus, for example, no one really has the right to receive sacred orders. Moreover, it is fitting to make some valid comments regarding these conditions, in general, for all the sacraments.

Opportunity refers, among other things, to the relationship or the juridical title in virtue of which, *hic et nunc*, the duty of a sacred minister to administer a sacrament to the subject who asks for it, is established and made obligatory. Not all the ministers have the duty (sometimes he cannot even do it) of administering the sacraments to anyone who requests them; that obligation (and the eventual faculty) is normally tied to the require-

1. J. HERVADA, *Elementos de derecho constitucional canónico* (Pamplona 1987), p. 121.

2. Cf. T. RINCÓN-PÉREZ, "La salvaguardia de los derechos de los fieles en el proceso de preparación para los sacramentos," in *Fidelium iura* 3 (1993), pp. 101–135. Also cf. the Letter of CDWDS, December 18, 1999, regarding the appeal of some parents against the denial of confirmation to an 11-year-old, in *Notitiae* 35 (1999), pp. 537–540.

ments of the ecclesiastical organization, which generally may be summarized by saying that the minister must be *the pastor* of the person requesting a sacrament from him--a condition which may be established "by any one of the different ways of organization of the clergy and the Christian people"[3] (the diocesan bishop: c. 387; the parish priest: cc. 519, 530[4]; the chaplain: c. 566; etc.). However, due to the public character of both the sacred ministry and the right to the sacraments, any minister has the duty in fairness of dispensing them to anyone who may be experiencing great difficulty in going to his own or another pastor (cf. e.g. c. 986).

Concerning due *dispositions*, they are those conditions of the subject that make it possible for him to receive the sacraments validly, lawfully and fruitfully (this canon does not refer to the dispositions of the minister). They are very varied in themselves and also change from one sacrament to another. They interest us here to the degree to which they are understandable by law, specifically, to what degree may their presence be observed by the minister, because in that same measure his duty to admit the subject to partake of the sacrament in question becomes real (cf. *SC* 11). In general, it may be said that:

a) The minister must verify, as soon as possible and following the practice common to each case, that the penitent fulfills all the necessary conditions for the valid and lawful celebration of the sacrament; were it not so, he must do everything within his power to make the subject fulfill the conditions necessary to receive the sacrament in question. But if the subject does not change his disposition, the minister may and must deny the sacrament. "For example," says Rincón, "lack of serious purpose of amendment may determine the denial of absolution on the part of the confessor. But this refusal does not mean denial of the right to receive the sacrament, but rather confirms that it is the penitent himself or herself who refuses to do his/her part to make the sacramental sign. A person in grave sin, such as in the case of a public scandal, would be enough reason for the minister to refuse communion. In such a case, it would not be a matter of refusal of a right, but rather the observation that such a situation of grave sin is incompatible with the sacrament of the Eucharist."[5]

b) Whoever satisfies the required conditions, has received the necessary catechesis and, therefore, knowing its implications, freely expresses the desire to receive a sacrament, may be considered duly disposed.

c) The sacraments are actions of Christ and of the Church that have an objective efficacy, independent of the disposition of the subject, especially in the sacraments that imprint a character, and in marriage, for which the possibility of originating the marriage bond depends on the

3. Idem, *comentario al c. 213*, in *Pamplona Com.*
4. Cf. J. OTADUY, "El vínculo parroquial del fiel," in *Fidelium iura* 2 (1992), pp. 275–304.
5. "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 471. Cf. Dz.-Sch. 3333–3335; cc. 980, 987, 1007.

parties contracting a truly matrimonial consent before the Church. Other dispositions, although necessary to receive the grace of the sacrament, are not indispensable to their validity.

d) The faith of the subject is quite difficult to evaluate externally and, in many cases, may be considered implicitly in the expressed desire to receive a sacrament, since "while the question of intention cannot be confused with the problem of faith, neither can these two aspects be totally separated. After all, true intention is born from and nourished by a living faith."[6]

It can be said, then, that the minimum degree of faith necessary for validity is that which drives the faithful to request a sacrament. Except in paradoxical cases, whoever positively refuses the doctrine regarding the sacraments will not request them. In this sense, Rincón states that the faith of the subject is not necessary, except in the sacrament of penance, "taking into account that this sacrament is shaped essentially by the acts of the penitent and the confessor's absolution. In the remaining sacraments, their reception may be valid independently from personal faith, if the required liturgical, and canonical conditions are satisfied."[7] Faith, however, is necessary for the legality of the celebration, and the minister must try to enliven it in the subject whenever the latter is found weak or hesitant.

e) Infants (c. 97 § 2) receive baptism validly and lawfully, through the wish of their parents, in the faith of the Church. And they also receive in the same way the sacraments of Confirmation and the Eucharist when the law establishes or authorizes it (cc. 891, 913 § 2; cc. 695, 710 *CCEO*).[8]

3. The last requirement or condition for exercising the right to the sacraments, and for the consequent duty to administer them, is to make sure that those who request it "are not prohibited by law from receiving them," that is, that there be no *impediment or legal prohibition* in the specific case. The obstacles that the Law establishes on occasion, have the effect of assuring the validity and the legality of the sacramental act. They may refer to the qualities of the subject (age, capacity and, in general, the so-called impediments or irregularities, see, for example, cc. 1040–1049 and 1083–1094), to their catechetical preparation, their situation within the ecclesiastical community (e.g., non-Catholic, excommunicated, interdicted, public sinner, cf. cc. 915, 982, 1331–1332).

In the dispensation of the sacraments the purpose is, in short, to conjugate, on the one hand, the demands that flow from its sanctity and from

6. ITC, *De doctrina catholica sacramenti matrimonii* (1977), A, 2. 3, in ITC, *Documenta* (Vatican City 1988), p. 219.

7. "Disciplina canónica...," cit., p. 466. In the same sense J. SARAIVA, *I sacramenti della Nuova Alleanza*, 2nd ed. (Rome 1991), p. 253.

8. Cf. SCDF, Instr. *Pastoralis actio*, Regarding the baptism of children, October 20, 1980, in *AAS* 72 (1980) pp. 1137–1156.

the fact that their celebration is always an act of public worship, and, on the other hand, the fact that they are the redeeming means instituted by Jesus Christ in favor of men and women (*sacramenta propter homines*), to allow each one to share the fruits of Redemption. These two aspects are not opposite; on the contrary, they need and complement one other, but they have different intensities in each sacrament. The Church does not hesitate in administering those sacraments that under particular circumstances (danger of death especially) may be the necessary means to a person's salvation, at least *sub condicione*. This is presupposing the will of the subject and his disposition, and dispensing if necessary with any requirement or impediment that is not strictly tied to the essence of the sacrament in question (cf., among others, cc. 850, 861 § 2, 865 § 2, 961, 976, 1005).

844 **§ 1. Ministri catholici sacramenta licite administrant solis christifidelibus catholicis, qui pariter eadem a solis ministris catholicis licite recipiunt, salvis huius canonis §§ 2, 3 et 4, atque can. 861, § 2 praescriptis.**

§ 2. Quoties necessitas id postulet aut vera spiritualis utilitas id suadeat, et dummodo periculum vitetur erroris vel indifferentismi, licet christifidelibus quibus physice aut moraliter impossibile sit accedere ad ministrum catholicum, sacramenta paenitentiae, Eucharistiae et unctionis infirmorum recipere a ministris non catholicis, in quorum Ecclesia valida exsistunt praedicta sacramenta.

§ 3. Ministri catholici licite sacramenta paenitentiae, Eucharistiae et unctionis infirmorum administrant membris Ecclesiarum orientalium quae plenam cum Ecclesia catholica communionem non habent, si sponte id petant et rite sint disposita; quod etiam valet quoad membra aliarum Ecclesiarum, quae iudicio Sedis Apostolicae, ad sacramenta quod attinet, in pari condicione ac praedictae Ecclesiae orientales versantur.

§ 4. Si adsit periculum mortis aut, iudicio Episcopi dioecesani aut Episcoporum conferentiae, alia urgeat gravis necessitas, ministri catholici licite eadem sacramenta administrant ceteris quoque christianis plenam communionem cum Ecclesia non habentibus, qui ad suae communitatis ministrum accedere nequeant atque sponte id petant, dummodo quoad eadem sacramenta fidem catholicam manifestent et rite sint dispositi.

§ 5. Pro casibus de quo in §§ 2, 3 et 4, Episcopus dioecesanus aut Episcoporum conferentia generales normas ne ferant, nisi post consultationem cum auctoritate competenti saltem locali Ecclesiae vel communitatis non catholicae, cuius interest.

§ 1. Catholic ministers may lawfully administer the sacraments only to catholic members of Christ's faithful, who equally may lawfully receive them only from catholic ministers, except as provided in §§ 2, 3 and 4 of this canon and in can. 861 § 2.

§ 2. Whenever necessity requires or a genuine spiritual advantage commends it, and provided the danger of error or indifferentism is avoided, Christ's faithful for whom it is physically or morally impossible to approach a catholic minister, may lawfully receive the sacraments of

penance, the Eucharist and anointing of the sick from non-catholic ministers in whose Churches these sacraments are valid.

§ 3. Catholic ministers may lawfully administer the sacraments of penance, the Eucharist and anointing of the sick to members of the eastern Churches not in full communion with the catholic Church, if they spontaneously ask for them and are properly disposed. The same applies to members of other Churches which the Apostolic See judges to be in the same position as the aforesaid Eastern Churches so far as the sacraments are concerned.

§ 4. If there is a danger of death or if, in the judgment of the diocesan Bishop or of the Bishops' Conference, there is some other grave and pressing need, catholic ministers may lawfully administer these same sacraments to other christians not in full communion with the catholic Church, who cannot approach a minister of their own community and who spontaneously ask for them, provided that they demonstrate the Catholic faith in respect of these sacraments and are properly disposed.

§ 5. In respect of the cases dealt with in §§ 2, 3 and 4, the diocesan Bishop or the Bishops' Conference is not to issue general norms except after consultation with the competent authority, at least at the local level, of the non-catholic Church or community concerned.

SOURCES: § 1: c. 731 § 2; *UR* 8
§ 2: SCHO Resp., 15 nov. 1941; *OE* 27; DE/1967 I, 43, 46, 55–59; SPCU Decl., 7 ian. 1970, 6 (*AAS* 62 [1970] 184–188); SPCU Communicatio, 17 oct. 1973, 9 (*AAS* 65 [1973] 616–619)
§ 3: *OE* 27; *UR* 15; DE/1967 I: 46
§ 4: DE/1967 I: 55; SPCU Instr. *In quibus rerum*, 1 iun. 1972, 6 (*AAS* 64 [1972] 518–525)
§ 5: DE/1967 I: 42

CROSS REFERENCES: cc. 1365, 1389 § 2

COMMENTARY

José T. Martín de Agar

This canon regulates the *communicatio in sacris* on sacramental matters, although some particular cases remain outside its scope, such as baptism in case of need (c. 861 § 2), and mixed marriages subject to a special norm.

Before the Second Vatican Council, *communicatio in sacramentis* between Catholics and non-Catholics was absolutely prohibited by the regulations (cf. c. 731 § 2 *CIC*/1917). This last Council, delving more deeply into the common aspects that exist between the Catholic Church and the separated Christian churches and communities, established the foundation for a renewed ecumenical action that contemplates, among others, the possibility of a certain participation in the sacraments with some of them.

The fundamental principle set forth by the Council is that "a *communicatio in sacris* which runs counter to the unity of the Church, or which involves formal adhesion to error or the danger of aberration in the faith, of scandal, and of indifferentism, is forbidden by the law of God." (*OE* 26). Together with this principle, which has to be respected in every case (cf. *OE* note 31), the Council demarcates the space in which *communicatio in sacris* is possible, and at times advisable. At the same time, "there are two main principles on which the practice of such common worship depends: first, that of the unity of the Church which ought to be expressed; and second, that of the sharing in the means of grace. The manifestation of unity very generally forbids common worship. Grace to be obtained sometimes commends it" (*UR* 8 d). On these grounds, the Council itself established practical guidelines that were collected in various ways in several official documents and in the doctrine.[1]

The canon under discussion constitutes, on a disciplinary level, "the final point of the doctrinal and practical itinerary complex" initiated as a result of the council decrees,[2] insofar as it signifies the *ex integro* reordering of the *communicatio* in sacramental matters,[3] similarly collected in the *CCEO* (c. 671).[4] This is not the case for other aspects of the *communicatio in sacris*, some of which have purposely not been treated in the Code, so that the Holy See may issue rules and guidelines according to the

1. SPCU, Directory *Ad totam Ecclesiam* May 14, 1967, *AAS* 59 (1967) 574–592 and April 16, 1970, *AAS* 62 (1970) 705–724, cf. no. 38; Declaration *Dans ces derniers*, January 7, 1970, ibid., 184–188; Instr. *In quibus rerum* June 1, 1972, *AAS* 64 (1972) pp. 518–525, with the Note *Dopo la pubblicazione* October 17, 1973, *AAS* 65 (1973) pp. 616–619. Cf. P. RODRÍGUEZ, "La 'intercomunión' y la unidad de la Iglesia," in *Ius Canonicum* 15 (1975), pp. 347–364. M. BROGI, "'Communicatio in Sacris' tra Cattolici e Cristiani Orientali non Cattolici," in *Antonianum* 53 (1978), pp. 170–193.

2. F. COCOPALMERIO, "Communicatio in sacris iuxta novum Codicem," in *Portare Cristo all'Uomo* II (Rome 1985), p. 207.

3. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 472.

4. Cf. D. SALACHAS, "La comunione nel culto liturgico e nella vita sacramentale tra la Chiesa Cattolica e le altre Chiese e Comunità Ecclesiali," in *Angelicum* 66 (1989), pp. 403–420; M. BROGI, "Aperture ecumeniche del *CCEO*," in *Antonianum*, 66 (1991), pp. 455–468.

circumstances.[5] This effort to clarify and correctly stress council teachings has been recently enriched by the ecumenical Directory.[6]

The canon determines, therefore, the scope and conditions in which common worship in sacramental matters is permitted and, also, when it is prohibited and, therefore, liable to a penal sanction by virtue of c. 1365.

The main novelty introduced by the Council is that, together with the general rule which, as before, prohibits in principle the *communicatio in sacramentis,* now certain exceptions are classified. These exceptions are more or less broad according to the Church or non-Catholic community in question, for while with the Eastern Churches "although separated from us, yet possess true sacraments, above all—by apostolic succession the priesthood and the Eucharist, whereby they are still joined to us in closest intimacy. Therefore some worship in common (*communicatio in sacris*), given suitable circumstances and the approval of Church authority, is not merely possible, but is encouraged" (*UR* 15). With the other churches and communities, insofar as they lack especially a priesthood, the sacramental reciprocity is more difficult and exceptional (*UR* 22). In any case "worship in common (*communicatio in sacris*) is not to be considered as a means to be used indiscriminately for the restoration of the unity among Christians" (*UR* 8).

As for the Eucharist, a distinction must be made between the concelebration of Mass and Eucharistic Communion. The canon under discussion relates exclusively to the cases where intercommunion is possible in the reception and administration of the Eucharist, justified by the need to receive the grace of the sacrament; while the concelebration remains forbidden (c. 908; cf. c. 702 *CCEO*). In fact, the sacrifice of the Mass is the sacrament of unity of the Church by means of which "the unity of God's people is signified and brought about" (c. 897); therefore, the perfect communion expressed by such an act must exist among those who celebrate it together: "in every eucharistic celebration all of the faith of the Church is put into action. It is ecclesial communion in all of the dimensions which it manifests and brings about."[7] Accordingly, the new Ecumenical Directory explains that precisely "given that the concelebration of the Eucharist is a

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5. Cf. *Comm.* 15 (1983), p. 198; SPCU, *La collaboration œcuménique,* February 22, 1975, in *EV* 5/1096–1198; idem, *Baptême, Eucharistie et ministère de "Foi et Constitution". Une réponse catholique,* July 21, 1987, in *Service d'information* 65 (1987), pp. 130–150; idem, *Directivas sobre la cooperación internacional en la traducción de la Biblia,* November 16, 1987, ibid. pp. 150–156. Cf. H.J. URBAN, "La collaboration oecuménique dans l'Eglise locale," in *Service d'information* 58 (1985), pp. 51–58.

6. PCPCU, *Directorio para la aplicación de los principios y normas sobre el ecumenismo, AAS* 85 (1993) 1039–1119. For an early commentary on this work, regarding the matter with which we are here concerned: P. GEFAELL, "Partecipazione nella vita sacramentale nel nuovo Direttorio ecumenico del 1993," in *Ius Ecclesiae* 5 (1993), pp. 439–445.

7. JOHN PAUL II, *Address,* November 18, 1978, *AAS* 71 (1979) p. 38.

visible manifestation of the full communion of faith, worship, and community of life of the Catholic Church, expressed by the ministers of this Church; it is not permitted to concelebrate the Eucharist with ministers of other Churches and ecclesial communities" (DE/1993 104e).[8]

With these premises we are able to consider the positive contents of canon 844.

I. The *general norm*. As has been stated before, § 1 keeps in force the criterion that, in principle, "Catholic ministers may licitly administer the sacraments only to Catholic members of the Christian faithful," who "likewise may licitly receive the sacraments only from Catholic ministers," with the exclusion of the exceptions allowed in the remaining paragraphs of the same canon.

This general norm, in a positive sense, authorizes every Catholic minister to administer the sacraments to any Catholic, even from another rite, according to the existing norms (*OE* 14 and 16. Cf. commentary on c. 846 *in fine*).

II. The *exceptions* or specific cases in which the *communicatio in sacramentis* is permitted are treated systematically in §§ 2–4 of our canon, always in relation to penance, the Eucharist and the anointing of the sick:

A. *Cases in which a Catholic licitly receives the sacraments of a non-Catholic minister* (§ 2)

This norm is meant for the faithful who need to judge if the required conditions exist in their case, namely:

1. That it be physically or morally impossible for them to approach a Catholic minister. The faithful must evaluate to what degree this circumstance is expected to be transitory, indefinite or permanent, in relation to his need for receiving the sacrament in question. Moral impossibility requires grave difficulty in approaching a Catholic minister, proportionate to the fact of receiving the sacrament outside the Catholic communion. The circumstances that originate this moral impossibility are very diverse: remoteness, danger, etc.; but cannot apply to a situation provoked on purpose, nor to greater convenience, nor to human respect or prudence of the flesh, because the faithful must be disposed to give testimony of his faith even at the expense of a proportionate personal sacrifice.

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8. A joint declaration of the Pope and of the Syrian Orthodox Patriarch concludes with the statement that "la sagrada Eucaristía, in cuanto es la máxima expresión de la unidad cristiana entre los fieles and entre los obispos and los sacerdotes, no puede ser todavía concelebrada por nosotros. Una tal celebración presupone una completa identidad de fe, que todavía no existe entre nosotros" (JOHN PAUL II and MOR MAR IGNATIUS ZAKKA I IWAS, *Joint Declaration*, June 23, 1984, no. 8, in *EV* 9/844. Cf. JOHN PAUL II, *Address*, June 1, 1989 in Oslo, in *Service d'information* 71 (1989), p. 90). A certain ecumenical participation is permitted, however, in the non-essential rites of the Eucharistic liturgy (cf. DE/1993, 122, 126, 133).

2. That it be necessary or at least really useful for his soul to receive the sacrament in question. This situation varies from one sacrament to the next: thus, penance and anointing of the sick in danger of death can be necessary for salvation. In evaluating this circumstance the faithful must seek a real spiritual benefit, of purification and union with Christ, and not simply to participate more fully in a non-Catholic religious rite.

3. That the danger of error or indifferentism be avoided. It is a requirement of divine Law, as we have seen, that the faithful must fulfill for themselves and eventually before third parties. Even if it is formulated negatively, its observance may demand certain acts of withdrawal from danger, such as public profession of the Catholic faith, or explaining to others the reasons that justify one's own conduct in order to avoid scandal (cf. Rom 14). On this point, the Bishops' Conference of Santo Domingo advises that "if there is danger of scandal in the Catholic community, the appropriate catechesis regarding this point will be performed at the first opportunity."[9]

4. That those sacraments "exist validly" in the Church of the minister from whom they are received. It is not enough that they be considered valid in that Church, but rather they must be so in reality. Without this assurance, it would not be lawful to receive them; for this reason, the faithful must solve any positive doubt before requesting them. The separated Eastern Churches retain the validity of the sacraments (*UR* 15); thus, with the above-mentioned conditions, Catholics may receive the three sacraments from a minister of an Eastern Church (DE/1993 123). However, in the Western Christian churches and communities these three sacraments cannot always be considered valid, either because for some of them they do not retain the faith, or because they lack the apostolic succession and, with it, a minister capable of performing and administering them (*UR* 22). The requirement regarding validity implies, then, that the Catholic faithful "can only request these sacraments from a minister of a Church in which such sacraments are valid or from a minister who, according to the Catholic doctrine regarding ordination, is recognized as validly ordained" (DE/1993 132)[10]; and this reduces in practice the ministers of the Christian communities ranked equally with the Eastern Churches by the Holy See.

B. *Cases in which a Catholic minister licitly administers the sacraments to non-Catholic Christians* (§§ 3 and 4)

The canon distinguishes, in each of these two paragraphs, the Eastern Christians from the rest of the separated Christians.

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9. For the particular provision relative to c. 844 §4: cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complemetare al CIC* (Milan 1990), p. 589.

10. Regarding the validity of the sacraments in the Anglican communion cf. *Letter* of the SCDF, March 27, 1982, with the observations *The Co-Chairmen*, regarding the "Informe final" of the AR*CIC*, *AAS* 74 (1982) 1060–1074, also in *EV* 8/143–172. Cf. ITC, *De apostolicitate Ecclesiae et de successione apostolica* (1973), in ITC, *Documenta*, cit. p. 65–69.

1. To the Eastern Christians and those ranked with them in sacramental matters by the Holy See,[11] the Catholic minister may lawfully administer the sacrament of penance, the Eucharist and the anointing of the sick with the following conditions:

a) If they ask for them of their own accord. This condition has been interpreted by the doctrine in the sense that the minister must not take the initiative in suggesting, inviting or persuading them,[12] without taking into consideration "the discipline of the Eastern Churches for their own faithful" or using the sacraments (or the circumstances of need) as an instrument of proselytism (DE/1993 125). But beyond those concerns, it is fitting to think that the good of the souls and the need to participate in the grace, may advise the Catholic minister to do everything within his power to make sure that those persons request the sacraments freely from their own ministers and, in case of impossibility, from him.

b) If they are properly disposed. In other words, assuming that they believe correctly in the sacraments and fulfill the personal conditions that the Church demands from its faithful. All of this must be verified by the minister, who must also help the persons to prepare if they are not ready to receive the sacraments.

2. In the case of the rest of the separated Christians, because there are greater doctrinal differences, other, more severe conditions are required in addition to the previous ones, in order to safeguard the principles set forth above for the correct *communication in sacris:*

a) That they be in mortal danger or that, in the judgment of the diocesan bishop or of the bishops' conference, there be another serious need.

Some conferences have indicated these cases of need in addition to the danger of death. Thus, in the Dominican Republic, "urgency of conscience or serious difficulty with the ministers of their Church" are considered such needs"[13]; the Mexican Bishops' Conference allows the administration of the three sacraments of this canon to Christians who are sick, refugees, prisoners or persecuted, and "to those who express a vehement and legitimate desire to receive them," when their ministers do not appear to provide the service within three months;"[14] the Argentinean Conference considers as cases of serious need "accident or catastrophe," "jailing or persecution," grave spiritual need due to migration or dispersal" and "other cases, of grave need determined by the diocesan bishop."[15]

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11. E.g. the Old Catholics. Regarding the Catholic Patriotic Association of China, cf. W. WOESTMAN, *Sacraments* (Ottawa 1992), p. 12, note 40.
12. E. TEJERO, commentar on c. 844, in *Pamplona Com.*
13. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze...*, cit., p. 589.
14. Ibid., pp. 461–462.
15. Decr. of April 1990, *Recognitio* June 15, 1991.

b) That they be unable to approach their own minister. Regarding the moral impossibility of going to a minister of their own church, what has been said about Catholics may be applied. It must be observed that the Catholic pastor, when that condition is not met, must take all possible steps to have those persons approach their own ministers.

c) That they profess the Catholic faith with respect to those sacraments. This must be verified by the minister by requesting the statement of such faith and, if he deems it necessary, by catechizing the person in a timely fashion. The Argentinean Bishops' Conference specifically requires that "before administering the sacraments mentioned, an explicit declaration of the Catholic faith with respect to these shall be requested, if possible."[16]

Finally, harmony and reciprocity with the separated churches must be sought in all these matters, to avoid contrasts or hurting the sensibility of someone, by giving the impression of a misguided proselytism or by seeming to scorn the customs and regulations of these churches regarding the sacraments.[17] For this reason, § 5 of this canon establishes that, before issuing a general norm, the bishop or the bishops' conference must consult the authorities of those Christians faiths (*OE* 29; cf. DE/1993 122 and 130). With this in mind, the Santo Domingo Bishops' Conference, in authorizing the Catholic ministers to administer these three sacraments to non-Catholics, in certain cases adds the condition that their "competent authority, at least the local authority, is not opposed to it."[18]

16. Ibid.
17. E.g., regarding the Eucharistic fast or regarding the admission of Catholics to their rites (DE/1993, 124–125)
18. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze...*, cit., p. 589.

845 **§ 1. Sacramenta baptismi, confirmationis et ordinis, quippe quae characterem imprimant, iterari nequeunt.**

§ 2. Si, diligenti inquisitione peracta, prudens adhuc dubium supersit num sacramenta de quibus in § 1 revera aut valide collata fuerint, sub condicione conferantur.

§ 1. Because they imprint a character, the sacraments of baptism, confirmation and order cannot be repeated.

§ 2. If after diligent enquiry a prudent doubt remains as to whether the sacraments mentioned in § 1 have been conferred at all, or conferred validly, they are to be conferred conditionally.

SOURCES: § 1: c. 732; OBP *Prae* gen., 4; RConf 2; RCIA appendix, 7
§ 2: RCIA appendix, 7; OD I: 9–18

CROSS REFERENCES: cc. 869, 876, 894

COMMENTARY

José T. Martín de Agar

This canon states an old norm of the ecclesiastic regulations that has a dogmatic grounding, defined in the Councils of Florence and Trent.[1] Baptism, confirmation, and ordination "imprint in the soul an indelible character, that is, a spiritual sign that distinguishes it from others,"[2] consecrating and configuring him who receives Christ ontologically and permanently, and, therefore, cannot be repeated.[3]

Insofar as baptism is concerned, the First Council of Constantinople had already provided that whoever had received it in a heretical sect, and wanted to be admitted in the Church, should not be rebaptized.[4] This

1. *Sess.* VII *De sacramentis in genere*, c. 9, Dz.-Sch. 1609.
2. Conc. Floren., *Decr. pro Armenis*, Dz.-Sch. 1313.
3. Regarding this topic, cf. J. Saraiva, *I sacramenti della Nuova Alleanza*, 2nd ed. (Rome 1991), pp. 264–294.
4. Cf. Council I of Constantinople, c. 7 (*Conciliorum Œcumenicorum Decreta* (Bologna 1962), p. 35); Lateran Council IV, c. 4 ibid., p. 235; Conc. Trid., *sess.* VII *De sacramento baptismi*, cc. 11 and 13, ibid., p. 686; *sess.* XIV, cap 2, ibid., p. 704. Pope Stephen had already

results from the fact that the faith or the virtue of the minister is not necessary for the validity of baptism: it is enough that he wants to do what the Church does in baptism.[5]

As a consequence of this doctrinal truth, § 2 of the canon establishes that, in case of doubt, these sacraments may be administered conditionally. The doubt may be related to whether the sacrament was received, or to whether it was valid. Regarding these points, an investigation must be made diligently to try to solve the doubt. The result may be: *a)* positive, that is, the certitude that the sacrament has been validly received; *b)* negative, when it can be verified that the sacrament has not been received, and then it is administered in an absolute form; *c)* that a reasonable doubt remains and, then, it must be administered *sub condicione*.

When there is doubt regarding reception of the sacrament, all the resulting proofs and evidence (testimony, godparents, common opinion, declaration of the interested party, documents, etc.) must be evaluated (cf. cc. 876, 894). It is important to note that in the Eastern Churches baptism and confirmation are received in only one act, so that proof of one is evidence of the other (DE/1993 99 a). Canons 869 and 870 contain specific rules for cases where there is doubt regarding someone's baptism.

When there is doubt about the validity of the sacrament conferred, it must be taken into account:

1. That the minister's personal *faith* is not required for validity[6]; it is only necessary that valid matter and form be used correctly and that the minister have the necessary capacity and the intention of doing what the Church does,[7] an intention that is presumed if "he used adequately and seriously the correct matter and form."[8]

2. But the faith of the Church or community in which those sacraments are celebrated is indeed required, that is, that there be a substantial agreement regarding such sacraments between Catholic doctrine and the faith in which they were received; it is not enough that the *rites* of

tried to resolve the controversy in his letters to the churches of Asia Minor and of Africa, who re-baptized converts to their assemblies: "nihil innovetur quod traditum est" (Let. 174, 2 of St. Cyprian: *CSEL* 3. 799); but St. Augustine would be the one who, expanding on the teaching of Optatus of Milevis (*De schisma donatistarum*, *CSEL* 26. 126–129), would explain that "non eorum meritis a quibus ministratur, nec eorum quibus ministratur (constare) Baptismum, sed propria sanctitate atque veritate, propter eum a quo institutus est" (*Contra Cresconium donatistam* 1, 4, 19, 16: *PL* 43. 559): cf. L. ORFILA, *Lezioni di Storia del Diritto Canonico*, pro manuscripto (Rome 1993), p. 191.

5. CONC. FLOREN., *Decr. pro Armenis*, Dz.-Sch. 1316.

6. Cf. *supra* note 4; cf. J. SARAIVA, *I sacramenti della...*, cit., pp. 244–248.

7. Cf. Resp. of the Holy Office December 18, 1872, Dz.-Sch. 3100–3102; cf. Dz.-Sch. 1611; ST. THOMAS AQUINAS, *In IV Sent.* d. 6 q. 1 a. 3 sol. 2 ad 1.

8. LEO XIII, Let. *Apostolicae curae*, September 13, 1896, Dz.-Sch. 3318.

baptism, confirmation, and ordination exist there, if those rites do not respond to a common faith. To determine if such agreement exists, one must consult the ritual books of that community regarding their prescription about the matter and the form, as well as about their use.

As to *the capacity* of the minister, while baptism may be administered by any man (c. 861 § 2), confirmation and ordination require from the minister a specific capacity to confer them, necessarily linked to the apostolic succession. It is important to remember that in 1896, Leo XIII had already declared invalid the ordinations of the Anglican rite, for lack of form, which in turn denoted a defect in the intention.[9] Even today serious doubts remain regarding the sacramentality of the priesthood as it is interpreted in the Anglican communion.[10] The Decree *Unitatis redintegratio* states that the separated Eastern Churches, however, "possess true sacraments and above all, by apostolic succession, the priesthood and the Eucharist" (*UR* 15).

4. The permission of the recipient is also necessary if he is an adult (Dz.-Sch. 781; cc. 865, 889 § 2, 1026).

5. Regarding the validity of *baptism* received outside the Catholic Church, the *Ecumenical Directory* establishes the following criteria:

a) "The validity of baptism, as administered in the different Eastern Churches, does not offer any doubt." Therefore, verifying that it has been celebrated is enough (no. 99 a), except for the doubt that may arise when it has been administered by sprinkling a group.

b) As for the rest of the Christian communities, one must see if there is an agreement with them for mutual recognition of baptism, established among the respective local authorities (bishops' conference, diocesan bishop, etc.; no. 99 b); in the case where there is none, the criterion to be applied is to consider baptism conferred with water valid if the immersion or infusion was accompanied by the trinitarian formula, for which it is enough to ensure that it is so disposed in the ritual books used, and then it is presumed that the minister observed them faithfully and had adequate intentions, unless there is serious evidence to the contrary (no. 95).[11]

9. Ibid., Dz.-Sch. 3315–3319.

10. Cf. SCDF, *Letter*, March 27, 1982, with the observations "The Co-Chairmen," regarding the *Informe final* of the ARCIC, in *AAS* 74 (1982), pp. 1060–1074, also in *EV* 8/143–172. Cf. ITC, *De apostolicitate Ecclesiae et de successione apostolica* (1973), in ITC, *Documenta* (Vatican City 1988), pp. 65–69.

11. The Resp. of the Holy Office, December 28, 1949, declared the necessary intention should be presumed in the case of one who had received Baptism in the following communities: Disciples of Christ, the Presbyterian, Congregationalist, Baptist, and Methodist churches: Dz.-Sch. 3874. The same dicastery, however, has declared that baptism should be considered invalid in "Christian community" or "Die Christengemeinschaft" (R. Steiner): *AAS* 83 (1991), p. 422, and in "The New Church" (E. Swedenborg), *AAS* 85 (1993) 179. For information on other communities see W. WOESTMAN, *Sacraments* (Ottawa 1992), pp. 22–23, note 69.

c) The *fact* of baptism is considered sufficiently proven by the official certification of the community in which it was received.

d) The Directory reminds us, in addition, that the practice of baptizing *sub condicione* whomever desires to be admitted in the Church must be followed only when a serious doubt persists after due investigation, explaining then to the interested parties the sense of this second baptism, and conferring it privately (no. 99).

6. Regarding *confirmation*, it must be considered valid if received in the Eastern Church. By contrast, there is no agreement with the Protestant communities either "regarding the meaning or regarding the sacramental nature, or even regarding the very manner of administering the sacrament;" therefore, when receiving into the Catholic Church persons coming from these communities, they must be confirmed before being admitted to the Eucharistic communion (DE/1993 101).

846 **§ 1. In sacramentis celebrandis fideliter serventur libri liturgici a competenti auctoritate probati; quapropter nemo in iisdem quidpiam proprio marte addat, demat aut mutet.**

§ 2. Minister sacramenta celebret secundum proprium olaritum.

§ 1. The liturgical books, approved by the competent authority, are to be faithfully followed in the celebration of the sacraments. Accordingly, no one may on a personal initiative add to or omit or alter anything in those books.

§ 2. The ministers are to celebrate the sacraments according to their own rite.

SOURCES: § 1: c. 733 § 1; SCHO Monitum, 24 iul. 1958 (*AAS* 50 [1958] 536); *SCCong* Decr. *Privilegia et gratias*, 8 aug. 1959 (*AAS* 51 [1959] 915–918); *SC* 22 § 3; 63; SCRit Instr. *Tres abhinc annos*, 4 maii 1967 (*AAS* 59 [1967] 442–443); *SCDW* Instr. *Liturgicae instaurationes*, 5 sep. 1970 (*AAS* 62 [1970] 693); *ID* 4, 5
§ 2: c. 733 § 2; *SC* 4; *OE* 3, 6; SCRit *Ritus servandus in concelebratione Missae et ritus Communionis sub utraque specie*, *Prae* 7 (1965)

CROSS REFERENCES: cc. 850, 880 § 1, 928–930, 1000 § 1, 1009 § 2, 1119–1120

COMMENTARY

José T. Martín de Agar

Although, in the celebration of the sacraments, distinction must be made between the essential elements and the purely ritual elements, both are intimately linked since the sacraments are the center of the liturgy, and their celebration is always an act of public worship performed *in persona Christi*, which expresses the faith of the Church precisely by means of the rites that accompany them (*lex orandi, lex credendi*[1]). "As a result, the relaxation of the liturgical regulations is, at the same time, cause and

1. Regarding the meaning of relations between faith and liturgy cf. PIUS XII, Enc. *Mediator Dei*, *AAS* 39 (1947), pp. 540–541.

effect of a considerable dogmatic lack of focus"[2]; and the veneration and diligence required by its celebration (c. 840) is expressed precisely in the faithful observance of the prescriptions of the liturgical books. The right of the faithful to their own rite also demands that it be the one "approved by the legitimate pastors of the Church" (c. 214).[3]

However, when urgent need demands it, some sacraments may be administered omitting those elements and rites that are not essential for their validity (cf. cc. 850, 883 3°, 889 § 2, 961, 962, 976, 999, 1000). The competent authority that prepares and approves the liturgical books is, first of all, the Apostolic See, and, within its competence, the bishops' conference and the diocesan bishop, according to c. 838. This canon establishes the channels and the ways in which the liturgy may be adapted to the various cultures and mentalities, confirming at the same time, the unity of the Church (cf. c. 841).

The prohibition to modify by one's own initiative the rite to be followed in the celebration of the sacraments states almost to the letter the norm established in *SC* 22 § 3 that, besides the competent authority, "no other person, even if he be a priest, may add, remove, or change anything in the liturgy on his own authority."

There is diversity in the fact that the existing rituals do not impose uniformity but allow various forms of celebration, which are an expression of the liturgical richness of the Church and serve the necessary pastoral function fulfilled by the liturgy, "to stimulate and increase in the believers the sense of Christ."[4]

There is no one ritual today, as before, to celebrate the sacraments, but rather different books for each of them, promulgated at different times.[5]

The canon's § 2 demands that the minister celebrate the sacraments in his own ritual (in the same way that c. 674 § 2 of the *CCEO* demands of the ministers of the Eastern Rites) unless there is permission from the Holy See to celebrate them in another rite, a permission usually granted wherever there is a shortage of clergy, and in agreement with the local ordinaries of both rites. Otherwise, concelebration with ministers of a Catholic Church of another ritual is permitted for just cause (cf. cc. 701 and 707 of the *CCEO*).

Moreover, with reference to the recipient in the Latin rite, there is no general norm. Leaving baptism aside, which determines the ritual church of which the person baptized becomes a member (c. 111), the custom is

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2. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), p. 468.
3. Cf. W. WOESTMAN, *Sacraments* (Ottawa 1992), p. 25.
4. *MD*, p. 542. Cf. GIRM, 313.
5. An interesting account of the current liturgical books can be found in A. CUVA, "I nuovi libri liturgici," in *Notitiae* 21 (1985), pp. 394–408.

implicitly admitted, where it exists, of receiving the sacraments in a Catholic ritual other than the Latin ritual (c. 112 § 2). The receptions of penance (c. 991; *OE* 16) and of the Eucharist (c. 923) are explicitly authorized in any other Catholic ritual; confirmation too may be received from a minister of another rite (*OE* 14). However, sacred orders may only be received from a bishop of the same rite, unless there is an apostolic exemption (cc. 1015 § 2, 1021).

847 **§ 1. In administrandis sacramentis, in quibus sacra olea adhibenda sunt, minister uti debet oleis ex olivis aut aliis ex plantis expressis atque, salvo praescripto can. 999, n. 2, ab Episcopo consecratis vel benedictis, et quidem, recenter; veteribus ne utatur, nisi adsit necessitas.**

§ 2. Parochus olea sacra a proprio Episcopo impetret eaque decenti custodia diligenter asservet.

§ 1. In administering sacraments in which holy oils are to be used, the minister must use oil made from olives or other plants, which, except as provided in Can. 999 n. 2, has recently been consecrated or blessed by a Bishop. Older oil is not to be used except in a case of necessity.

§ 2. The parish priest is to obtain the holy oils from his own Bishop and keep them carefully in fitting custody.

SOURCES: § 1: cc. 734, 735; PAULUS Pp. VI, Ap. Const. *Sacram Unctionem infirmorum*, 30 nov. 1972 (*AAS* 65 [1973] 5–9); *Ordo Benedicendi Oleum Catechumenorum et Infirmorum et Conficiendi Chrisma*, 3 dec. 1970, 3, 4
§ 2: *Ordo Benedicendi Oleum Catechumenorum et Infirmorum et Conficiendi Chrisma*, 3 dec. 1970, 28

CROSS REFERENCES: cc. 880 § 2, 999

COMMENTARY

José T. Martín de Agar

The holy oils that are used in the administration of the sacraments are three: the holy chrism, the oil of the catechumens, and the oil of the sick. They must be prepared with vegetable oils, preferably olive oil[1]; and are used in four sacraments: baptism, confirmation, ordination and anointing of the sick. Anointing with the sacred oil constitutes the matter of the sacraments of confirmation and of the anointing of the sick; in the other two, it is only a part of the rituals of the celebration.

Normally, fresh holy oils should be used, that is, those blessed by the bishop at the most recent Holy Thursday Chrism Mass (cf. c. 734 § 1 *CIC*/1917). This is a prescription *ad liceitatem*, so that in case of need it is

1. Cf. PAUL VI, Ap. Const. *Sacram unctionem infirmorum*, November 30, 1972, *AAS* 65 (1973), pp. 5–9.

justified to use other older ones as long as they are not decomposed.[2] The oil of the sick may also be blessed by any priest in a case of necessity, "but only in the actual celebration of the sacrament" (c. 999, 2°).

Although this canon and c. 880 § 1 talk about *consecrated or blessed* oils, from the theological-liturgical point of view, the verb *consecrate* is properly applied to the Eucharist and to the persons who are consecrated to God, while the things intended for worshipping are said to be *blessed or dedicated.*[3] For this reason the ritual for the preparation of the holy oils is called "Ordo benedicendi oleum cathecumenorum et infirmorum et conficiendi chrisma."

It is the obligation of the parish priest to obtain each year the holy oils and to keep them carefully, since parish functions include the administration of baptism, confirmation, and the anointing of the sick (c. 530). This is not an obstacle to keeping the oils also in other places where these functions are carried out, or where, for whatever reason, they may be needed (clinics, convents, ships). In fact, c. 1003 § 3 authorizes each priest to "carry the holy oil with him, so that in a case of necessity he can administer the sacrament of anointing of the sick." Moreover, the holy chrism is also used in some other rites, such as the dedication of churches and altars.

2. Cf. *SCCong*, Decr. *Privilegia et gratias*, August 8, 1959, no. 7, *AAS* 51 (1959), p. 917.
3. Cf. *Comm.* 12 (1980), p. 325.

848 **Minister, praeter oblationes a competenti auctoritate definitas, pro sacramentorum administratione nihil petat, cauto semper ne egentes priventur auxilio sacramentorum ratione paupertatis.**

For the administration of the sacraments the minister may not ask for anything beyond the offerings which are determined by the competent authority, and he must always ensure that the needy are not deprived of the help of the sacraments by reason of poverty.

SOURCES: c. 736; *IOe* 22; *UT* 921

CROSS REFERENCES: cc. 531, 1264,2°

COMMENTARY

José T. Martín de Agar

This canon deals with the offerings that are usually requested of the faithful on the occasion of the administration of the sacraments, sacramentals and, in general, the acts of pastoral ministry. Canon 1507 § 1 *CIC*/1917 ranked them equally, in a certain way, with the administrative fees. Currently, c. 1264,2° makes the distinction, pointing out that it is a matter of offerings "on the occasion of the administration of the sacraments and sacramentals" which do not, by themselves, have a remunerative character. They correspond to what was previously called stole fees, which are the subject of c. 531, and are called duties even today.

The competent authority to which the canon refers is the assembly of bishops of the province "unless the law prescribes otherwise" (c. 1264). From time immemorial, in fact, the supreme legislator has desired that there be a uniformity among the neighboring dioceses regarding these offerings, to avoid controversies and possible scandals or admiration among the faithful.[1] Similarly, in the previous Law the constant norm was that the amounts fixed by the provincial assembly of bishops needed to be approved by the Holy See to be valid. This is only required now for administrative fees (c. 1264; cf. c. 1507 § 1 *CIC*/1917).

The minister of the sacraments must not request anything besides the fixed fee, although the faithful may give more or less than that amount, since these are voluntary offerings. Moreover, the minister must not be guided by economic or social criteria in the administration of the

1. Cf. SCCouncil, *Resolutio* December 11, 1920, *AAS* 13 (1921), pp. 350–352.

sacraments (*SC* 32), and, of course, they cannot be denied to those who are not in a position to give the offerings that are requested.

Relating this c. 848 with c. 843, it is clear that the right to the sacraments, and the consequent duty of the pastors, is the same for all the faithful, and that the offerings that are requested for their celebration do not constitute a requirement or condition of the exercise of such a right.

TITULUS I
De Baptismo

TITLE I
Baptism

849 **Baptismus, ianua sacramentorum, in re vel saltem in voto ad salutem necessarius, quo homines a peccatis liberantur, in Dei filios regenerantur atque indelebili charactere Christo configurati Ecclesiae incorporantur, valide confertur tantummodo per lavacrum aquae verae cum debita verborum forma.**

Baptism, the gateway to the sacraments, is necessary for salvation, either by actual reception or at least by desire. By it people are freed from sins, are born again as children of God and, made like to Christ by an indelible character, are incorporated into the Church. It is validly conferred only by a washing in real water with the proper form of words.

SOURCES: cc. 87, 737 § 1; *LG* 11, 16, 40; *AG* 14; *PO* 5; OBP *Prae* gen., 1–6, 18, 21, 23

CROSS REFERENCES: cc. 11, 96, 204, 205, 748 § 1, 842 § 1, 845 § 1, 846, 853, 864

COMMENTARY

María Blanco

1. Careful reading of this canon presents, in a particularly forceful way, the fundamental fact that the juridical phenomenon is one of the elements constituting the *Mysterium Ecclesiae.*

2. From the canonical point of view, the gist of the question lies in the fact that in the *lex gratiae* there is a juridical dimension, a dimension of Law. For, "when grace is given, by ordinary channels, through the sensible signs that are the instrumental causes of grace, grace does not materialize, but its channels do indeed materialize. In this way, grace is *sharable,*

a good that is distributed by human hands. We already have the principle of division or sharing in the central good of the Church. And, therefore, we have the necessary assumption for the law and, consequently, for justice."[1] Since these sharable goods are the sacraments, the minister is only the depositary and the sacraments must have been ascribed to man (as in the case of baptism) or to the faithful (in the case of the rest of the sacraments). Given these two conditions, the sacrament is properly *res iusta* and, therefore, due. "There is justice in administering it and injustice in refusing its administration. All this, of course, based on the *rite dispositus* subject; for the person not properly disposed, the sacrament is not a right."[2]

3. As opposed to what happens with the rest of the sacraments, in which only the faithful have a right, baptism is a sacrament that is offered to all people as long as they have not yet entered and become a part of the people of God (cf. c. 864). It is true that there is no precept in the Code where it is expressly stated that all people have a right to receive baptism, although there is no doubt of the relation with the provisions set forth in c. 748 § 1. We must keep in mind, moreover, that any person is destined to be saved, to be baptized and to belong to the Church, hence the admission even of baptism by desire. Between humans and Christ, as well as with the Church which is His Mystical Body, there is a salvific, objective relationship. This is such that all persons, because they have already been redeemed by Christ, have the right, before the pastors, not before God, to have this redemption applied to them.[3] It is clear, in fact, that the faith and the grace of baptism in relation to God are always merciful; however, in relation to the pastors of the Church, they have a right as far as their administration is concerned.[4] Consequently, if we may speak of the true and proper right to baptism, we may also speak of the juridical duty that obliges its performance.

4. When Vatican Council II speaks of Christ's redeeming will, it maintains that "He himself explicitly asserted the necessity of faith and Baptism (cf. Lk 16, 16; Jn. 3, 5), and thereby affirmed at the same time the necessity of the Church which men enter through Baptism as through a door" (*LG* 14). This necessity of baptism for salvation is an interpretative criterion of fundamental value in the juridical treatment of this sacrament.[5] Moreover, the CCC is clear when it states: "Holy Baptism is the basis of the whole Christian life, the gateway to life in the Spirit ('vitae spiritualis ianua'), and the door which gives access to the other sacra-

1. J. HERVADA, "Raíces sacramentales del Derecho Canónico," in *Vetera et Nova. Cuestiones de Derecho Canónico y afines*, II (Pamplona 1991), p. 867.
2. Cf. ibid., p. 873.
3. Cf. J.L. DÍAZ, "El derecho de todo hombre al Sacramento del Bautismo," in *Sacramentalidad de la Iglesia y Sacramentos* (Pamplona 1983), p. 542.
4. Cf. ibid., p. 545.
5. Cf. E. TEJERO, commentary on c. 849, in *Pamplona Com.*

ments. Through Baptism we are freed from sin and reborn as children of God; we become members of Christ, are incorporated into the Church and made sharers in her mission (cf. Council of Florence: Dz. Sch., 1314; cc. 204 § 1, 849 *CIC*; c. 675 § 1 *CCEO*): 'Baptismus est sacramentum regenerationis per aquam in verbo' (Baptism is the sacrament of the new birth by water and the word, Cath. R. 2, 2, 5)" (CCC, 1213).

5. In short, reception of baptism brings: 1) freedom from sin; 2) incorporation into the Church of Christ; and 3) conformance to Christ inasmuch as it makes us children of God. Leaving aside the first effect, it is to be noted that incorporation into the people of God carries with it a sharing in the mission of the Church (c. 204), since there is only one People whose members have the same dignity because of their regeneration in Christ (cf. *LG* 32) by virtue of which all are equal. This quality of member of the people of God is designated with the word *fidelis* or *christifidelis* (c. 204; cf. also c. 96) which is the *nomen gratiae* of all the baptized, whatever their situation within the Church.[6] "The cohesive link of the people of God, conceived as a social group, is baptism, which constituted into a people, that is, in a group of people united among themselves by a juridical and social link, and by some supernatural ties of fraternity, those who were previously related by no natural ties other than their common belonging to the ancestral line of Adam."[7] That means that baptism is one of the elements that juridically structure the Church.

At the core of this juridically organized society, the condition of faithful (cf. c. 204) is basically a condition of freedom, indeed, of *ontological* dignity and liberty.[8] It is the freedom of the children of God that emerged from dignity and brings with it autonomy within its very sphere.[9] In this sense, there is no doubt that, in the same way that we speak of human dignity, we can speak of Christian dignity. If from this human dignity flow rights and duties of an individual, then from Christian dignity flow rights and duties of the faithful. This means that just as in natural law dignity and freedom take the form of the fundamental rights and duties of man, in the law of grace, dignity and freedom give rise to the fundamental rights and duties of the faithful (cf. commentary on c. 204).[10] That "*dignitas* is personality. It means that the members of the people of God are not only individualities who, together, make up this People, but also persons: *personae in Ecclesia Christi.*"[11]

6. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia* (Pamplona 1991), p. 53.
7. Ibid., p. 54.
8. Cf. J. HERVADA, "La ley del Pueblo de Dios como ley para la libertad," in *Vetera et nova,* cit. p. 1081.
9. Cf. A. DEL PORTILLO, *Fieles*..., cit., p. 66; c. 227.
10. Cf. J. HERVADA, "La Ley del Pueblo de Dios...," cit., p. 1081.
11. A. DEL PORTILLO, *Fieles*... cit., p. 66. Cf. c. 96. Regarding Baptism in separated ecclesial communities, cf. DE/1993, nos. 92–101.

6. This canon states 'indelebili charactere Christo configurati Ecclesiae incorporantur." From this it is deduced that it is precisely the baptismal character which carries with it the *iura fundamentalia* previously mentioned because of the inherent dignity of baptism. However, Hervada further explains by saying that "to be a subject by right is the *juridical translation*, the lawful dimension of the ontological *dignitas*"[12]; but it is only one dimension, and not even the most important one. "The baptismal character is an ontological dimension that elevates a person to the supernatural plane and makes us sharers in Christ. It gives us, then, a share in the divine being, more eminent than that of the natural being. It is the *dignitas filiorum Dei*, that, while it reaches fullness and perfection by the sanctifying grace, is already possessed in the baptismal character. This is deduced from the fact that such a *dignitas* is linked by Vatican II to the *conditio* of the people of God, which refers not only to an ontological condition, but also to a juridical condition which flows, not from the sanctifying grace, but from the baptismal character, as a result of the already mentioned sacramental doctrine."[13] Therefore, it is precisely this baptismal character which guarantees the certainty and the stability of visibly belonging to the Church; even when, evidently, such character does not in itself subsist but is a supernatural "modalization" of the human being. This does not mean that there are two personalities (one for natural law and another one for canon law), but rather that there is only one personality, part natural and part supernatural.[14]

The Latin liturgy expresses this indelible effect through the chrismation of the baptized in the presence of the people of God and forbids its repetition when it has been celebrated validly, even if it has been done by separated brothers or sisters (cf. OBP, *Praenotanda*, 4).

Because it is a sacrament, baptism is a true sign of the regeneration of humanity and a sign through which we know he is a member of the Church. Regarding the first aspect, Hamman writes: "in Christ's life and mission, of what is the sacrament of baptism a sign? Of all the mission, of all the teaching, of all the works of Christ, from his baptism (even from his birth) through his resurrection. Of the messianic works, the death and the resurrection are the consummation, the final expression, in which all the mission, all the actions of Christ are discovered."[15] This is true to such a point that the other sacraments only deepen progressively the incorporation to Christ made once and for all by baptism.

7. But, in addition, we were saying that this sacrament ascribes the condition of faithful with all the rights and duties proper to it (cc. 96, 204).

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12. J. HERVADA, "Los derechos fundamentales del fiel a examen," in *Vetera et Nova*, cit., p. 1563.
13. Ibid., p. 1566.
14. Cf. ibid., p. 1560.
15. A. HAMMAN, *El Bautismo y la Confirmación* (Barcelona 1977), p. 183.

Starting from the conception of the Church as the people of God, it is clear that the incorporation into this People, the rights of "citizenship," in a word, the condition of a member must be understood as grounded in the reception of baptism; which also explains that "merely ecclesiastical laws bind those who were baptized in the Catholic Church or received into it" (c. 11).

8. Finally, it must be observed that the final section of this canon alludes to the necessary elements for the valid administration of the sacrament: *tantummodo per lavacrum aquae verae cum debita verborum forma*. The form, according to the provisions of cc. 846 § 1 and 853, is the invocation of the three Divine Persons, in accordance with the ritual in force.

CAPUT I
De baptismi celebratione

CHAPTER I
The Celebration of Baptism

850 **Baptismus minstratur secundum ordinem in probatis liturgicis libris praescriptum, excepto casu necessitatis urgentis, in quo ea tantum observari debent, quae ad validitatem sacramenti requirantur.**

Baptism is administered according to the rite prescribed in the approved liturgical books, except in a case of urgent necessity when only those elements which are required for the validity of the sacrament must be observed.

SOURCES: c. 737 § 2; OBP *Prae* gen. 23, *Prae* 21, 22, ch. V; RCIA ch. III

CROSS REFERENCES: cc. 843 § 2, 846, 853, 854, 856, 857, 858, 860, 861, 862, 863

COMMENTARY

María Blanco

1. After a canon of such transcendence as c. 849, which alludes to the ontological and juridical effects of baptism, the legislator details in the first canon of chapter I ("The Celebration of Baptism") the way in which this sacrament must be celebrated. To do this, it refers us to the provisions set forth in the liturgical books, a matter under the jurisdiction of the bishops' conferences according to the provisions of the Second Vatican Council: "shall forthwith prepare, in accordance with the new edition of the Roman Ritual, local rituals adapted linguistically and otherwise to the needs of the different regions. These rituals, on authentication by the Apostolic See, are to be followed in the regions in question" (*SC* 63 b). In short, the bishops' conferences are responsible for:

"1) Determining which are the adaptations referred to in number 39 of the Constitution, regarding the sacred liturgy.

"2) Carefully and prudently considering what should eventually be admitted from the traditions and the genius of each people, and, therefore, proposing to the Apostolic See other adaptations that may be deemed useful or necessary, to introduce them with its approval.

"3) Retaining or adapting particular elements of the rituals, as long as they are compatible with the Constitution regarding the sacred liturgy and with current needs.

"4) Preparing a translation of the texts, so that it is really adapted to the spirit of each language and culture, and adding the melodies for those portions that should be sung.

"5) Adapting and completing the introductions that are in the Roman Ritual, so that the ministers may understand and update the meaning of the rites.

"6) In the liturgical books that are to be published by the Bishops' Conferences, organize the material in the way that seems to be most useful for pastoral use" (OBP, *Praenotanda*, no. 30).

2. In the case of Spanish publications (Castillian and Catalan), there is a modification. The Latin edition reads: "Ordo baptismi parvulorum in periculo vel in articulo mortis, absente sacerdote et diacono adhibendus." The others say: "Bautismo de un niño en peligro de muerte" and "Baptisme d'infants en perill de mort." This could be interpreted in the sense that the ordained minister must proceed in this fashion when there is danger of death. In reality, ordained ministers will rarely resort to the abbreviated rite, because, faced with a danger of death that is not immediate, they will proceed with the complete rite and in *articulo mortis* only with the essential formula to which the sacrament of confirmation is added (cf. c. 883 § 3).[1]

However, if we adhere strictly to the provisions established by the legislator in this canon, it is clear that it explicitly limits the celebration reduced to its essential elements, which is only to be used *in case of urgent necessity*, without distinction as to whether the minister is a cleric or is not ordained. And this is so because the sacrament is not only the cause but also the sign of salvation. To maintain a distinction in the rites according to the minister who administers the sacrament would express that if a layperson administers them, "the only thing attained in this case is an *ex opere operato* reduced to freedom from sin, forgetting that, on the contrary, baptism always brings about all its effects."[2]

3. Regarding the essential elements, suffice it to say that the legislator implicitly refers to the provisions of c. 849 *in fine*: "tantummodo per lavacrum aquae verae cum debita verborum forma."

1. Cf. p. FARNES, "Del Bautismo," in *Phase*, 141 (1984), p. 219.
2. Ibid.

851 **Baptismi celebratio debite praeparetur oportet; itaque:**

1° adultus, qui baptismum recipere intendit, ad catechumenatum admittatur et, quatenus fieri potest, per varios gradus ad initiationem sacramentalem perducatur, secundum ordinem initiationis ab Episcoporum conferentia aptatum et peculiares normas ab eadem editas;

2° infantis baptizandi parentes, itemque qui munus patrini sunt suscepturi, de significatione huius sacramenti deque obligationibus cum eo cohaerentibus rite edoceantur; parochus per se vel per alios curet ut ita pastoralibus monitionibus, immo et communi precatione, debite parentes instruantur, plures adunando familias atque, ubi fieri possit, eas visitando.

The celebration of baptism should be properly prepared. Accordingly:

1° an adult who intends to receive baptism is to be admitted to the catechumenate and, as far as possible, brought through the various stages to sacramental initiation, in accordance with the rite of initiation as adapted by the Bishops' Conference and with the particular norms issued by it;

2° the parents of a child who is to be baptised, and those who are to undertake the office of sponsors, are to be suitably instructed on the meaning of this sacrament and the obligations attaching to it. The parish priest is to see to it that either he or others duly prepare the parents, by means of pastoral advice and indeed by communal prayer, bringing a number of families together, and, where possible, visiting them.

SOURCES: *SC* 64, 67; *LG* 14; *CD* 14; *AG* 14; SCRit Decr. *Ordo Baptismi Adultorum per Gradus Catechumenatus Dispositus*, 16 apr. 1962 (*AAS* 54 [1962] 310); OBP *Prae* gen., 12–14; *Prae*, 5, 1; *GCD* 96a, c; RCIA *Prae*, ch. I, II; SCDF Instr. *Pastoralis actio*, 20 oct. 1980, 27–33 (*AAS* 72 [1980] 1150–1155)

CROSS REFERENCES: cc. 206 § 1, 226, 788, 850, 852, 865 § 1, 867, 868,2°

COMMENTARY

María Blanco

I. The legislator has made a distinction between the preparation for baptism of children and of adults. For the latter, the preparation is performed through the catechumenate in its different stages such as described in the *Ordo initiationis christianae adultorum.* Canon 206 § 1 understands by catechumens those who, moved by the Holy Spirit, request to be incorporated into the Church and who "desire with an explicit intention to be incorporated into the Church, are by that very intention joined to her. With love and solicitude mother Church already embraces them as her own" (cf. *LG* 14).

1. All the regulations of this subject matter have been notably influenced by the liturgical norms dictated after the Second Vatican Council, in particular by the RCIA of 1972, even though after the promulgation of the *CIC*, timely reforms were made to bring the liturgical books into agreement with the normative code.[1]

2. From those provisions it is deduced, leaving aside everything related to the juridical statute of the catechumen, that in the case of adults or children older than 7 years old (cf. cc. 97 § 2 and 852), the adoption of the catechumenate is obligatory; while, on the other hand, it is not so for the number of stages and other aspects of the celebration. The degrees or stages that the adult must go through are as follows: 1° reception as catechumen; 2° admission to a more intensive preparation for the sacraments; and 3° reception of the sacraments (RCIA 6). The bishops' conference, on its part, may make the following accommodations:

"1° Before the catechumenate, where it is appropriate, a way may be established to receive 'sympathizers' (cf. no. 12).

"2° Wherever pagan worship is common, a first exorcism and a first renunciation may be introduced in the rite of entry into the catechumenate (nos. 79 and 80).

"3° It may be established that the gesture of signing the forehead may be made without touching it, wherever this touching may seem inadvisable (no. 80).

"4° Where, according to the practice of non-Christian religions, it may be the custom to give the initiates a new name immediately, it may be established that a new name be imposed on the candidates in the rite of entry into the catechumenate (no. 88).

1. Cf. SCDF, "Variationes in libros liturgicos ad normas Codicis Iuris Canonici nuper promulgati introducendae," September 12, 1983, in *Notitiae*, 19 (1983), pp. 540–555.

"5° Some auxiliary rites may be admitted in the same rite, number 89, to signify reception into the community, according to the local customs.

"6° During the catechumenate, in addition to the accustomed rites (nos. 106–124), a "rite of transition" may be established, such as, for example, advancing the 'deliveries' (nos. 125–126), or the *ephphethá* rite, or the recitation of the Symbol or the unction of the catechumens with oil (nos. 127–129).

"7° Omission of the anointing of the catechumens may be decreed (no. 218) or its transfer to the rites of immediate preparation (nos. 206–207) or its performance within the duration of the catechumenate as a "rite of transition" (nos. 217 and 80).

"8° The formulae of the renunciation may also be abbreviated or enriched (nos. 217 and 80)" (RCIA 65).

3. Together with the normative of the bishops' conferences regarding the catechumenate (cf. also c. 788), the norms dictated by the bishop by virtue of his legislative power must also be taken into account. Moreover, the RCIA expressly attributes to him competence to:

"1) Establish the institution of the catechumenate and decide on the appropriate norms for each need (cf. no. 44).

"2) Determine, according to the circumstances, if, and when, the rite of initiation may be celebrated outside the proper times (cf. no. 58).

"3) Grant exemption, for grave impediments, from one investigation and, in extraordinary circumstances, even from two (cf. no. 240).

"4) Allow the partial or complete use of the abbreviated Ritual (cf. no. 240).

"5) Delegate to catechists who are truly deserving and are well prepared the mission of performing the exorcisms and the blessings (cf. nos. 44 and 47).

"6) Preside at the rite of 'election' and validate the admission of the elected, by himself or by means of a delegate (cf. nos. 44).

"7) Establish the age of the godparents, according to the law" (RCIA 66).

To sum up, the ordinary may establish the catechumenate and give the appropriate norms as needed. This is something which, moreover, had already been ordered by *SC* 64: "The catechumenate for adults, comprising several distinct steps, is to be restored and brought into use at the discretion of the local ordinary. By this means the time of the catechumenate, which is intended as a period of suitable instruction, may be sanctified by sacred rites to be celebrated at successive intervals of time." The use of this power—related mainly to the organizational community aspects of the catechumenate and to those referred to by the *DPMB*, 72, becomes more or less obligatory according to the provisions of the post-code decrees of

each bishops' conference.[2] However, the most immediate performance and regulation of this subject matter is the natural office of each diocesan bishop.

4. Cavagnoli[3] has wondered what is the difference between the provisions of c. 851,1° and those of c. 865 § 1. The impression is that the legislator regulates the same juridical situation from two different perspectives: objectively (c. 851,1°: about the reception of baptism) and subjectively (c. 865 § 1: about the subject to be baptized).

5. Finally, in relation to the first section of c. 851, it is appropriate to point out that there are some juridical effects that are only produced in the case where an adult is baptized.[4] Especially, and in relation to marriage, these would be: the application of the Pauline privilege (c. 1143) and the assumption of a valid marriage before the celebration of baptism of at least one of the spouses which becomes sacramental *eo ipso*, when both are baptized.

II. As for the preparation of children for baptism, it is intimately related to the obligation of parents and godparents to give a Christian education to their children. The council declaration *Gravissimum Educationis* had established: "All Christians, that is, all those who having been reborn in water and the Holy Spirit are called and in fact are children of God, have a right to a Christian education. Such an education not only develops the maturity of the human person ... but is especially directed toward ensuring that those who have been baptized, as they are gradually introduced to a knowledge of the mystery of salvation become daily more appreciative of the gift of faith they have received" (*GE* 2). In fact, it is the duty of the parents to give the children a Christian education; and this demands in many cases a positive action on the part of the pastors so that the children may "exercise" the correlative right. The Instruction *Pastoralis Actio*, no. 29, also expresses itself in this sense.[5]

However, also according to c. 867 § 1, given the nature of this right, it would be inadmissible to deny or delay indefinitely the baptism of a child in order to achieve a better preparation of the parents or of the godparents. In other words, it would be inadmissible to delay, cut or deny the exercise of this fundamental right. As long as there is, of course, grounds for hoping that the child will be educated in the Catholic religion (cf. c. 868,2°). As John Paul II has stated, every human being has value because he is a

2. C. ERRÁZURIZ, "Il Battesimo degli adulti nell'attuale diritto canonico," in *Monitor Ecclesiasticus*, 115 (1990), p. 89.

3. G. CAVAGNOLI, "L'iniziazione cristiana nella prospettiva del nuovo Codice," in *Rivista liturgica*, 71 (1984), p. 257

4. C. ERRÁZURIZ, "Il Battesimo degli adulti come diritto e come causa di effetti giuridico-canonici," in *Ius Ecclesiae*, 1 (1990), p. 12.

5. SCDF, Instruction regarding infant Baptism, *Pastoralis Actio*, October 20, 1980, in *AAS* 72 (1980), pp. 1137–1156.

person called by God to the Kingdom of his Son. This is what the baptized parents who currently delay the baptism of their children must be made to understand. This insistence, the Pope continues, does not intend to minimize at all the pastoral effort that must be made to guarantee the Christian education "iam a prima aetate."[6] Nevertheless, the denial of baptism is not a means of pressuring and "much less of discriminating, but rather the teaching delay is intended, according to the case, to help the family progress in the faith or to help it become more aware of its responsibilities."[7]

Regarding the education of those who will assume the role of godparents, section 2 establishes some cautions that are closely related to the provisions set forth in the OBP, *Praenotanda*, 3: "To complete the truth of this sacrament, it is necessary that the children be educated later in that same faith in which they were baptized, of which the very sacrament they received before is the foundation. The Christian education, to which the children have a right, has no other aim than taking them little by little to grasp the designs of God in Christ, so that they may eventually ratify the faith in which they were baptized." This norm included in the OBP takes on particular importance when the minor reaches the age of reason.

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6. Cf. JOHN PAUL II "Discurso a los obispos franceses," in *Insegamenti di Giovanni Paolo II* (1987), X, 1, pp. 832–833.
7. SCDF, Instr. *Pastoralis Actio*, 31.

852 **§ 1. Quae in canonibus de baptismo adulti habentur praescripta, applicantur omnibus qui, infantia egressi, rationis usum assecuti sunt.**

§ 2. Infanti assimilatur, etiam ad baptismum quod attinet, qui non est sui compos.

§ 1. The provisions of the canons on adult baptism apply to all those who, having ceased to be infants, have reached the use of reason.

§ 2. One who is incapable of personal responsibility is regarded as an infant even in regard to baptism.

SOURCES: § 1: RCIA ch. V; RConf 11
§ 2: c. 745 § 2, 1°

CROSS REFERENCES: cc. 97, 98, 99, 111, 205, 851,1°, 863, 866

COMMENTARY

María Blanco

This canon establishes an important distinction for practical purposes: the distinction is made between "infants" and "all those who, having ceased to be infants, have reached the use of reason." The Ordo Baptismi Parvulorum applies to the first group, while to the second is applied the RCIA, which, according to the provisions of c. 851,1° demands a different preparation by means of the catechumenate.

In § 2 is included a specialty of the general principle contained in c. 99, which establishes a presumption of incapacity *iuris et de iure*, by virtue of which those who habitually lack the use of reason must be subject to guardianship.

There are no provisions regarding the rite. The *Schema* of 1980, in c. 806, established the following: "§ 1. Adultus baptizetur ritu libere ab ipso electo. § 2. Infans baptizetur ritu parentum, et, si parentes ad diversum ritum pertinent catholicum, ritu eorum alterutrius concordi ratione ab ipsis electo; ob peculiares tamen rationes parentes, concordi item voluntate alium ritum catholicum eligere possunt. § 3. Si unus tantum parentum sit catholicus, pars catholica omnia pro viribus faciat ut proles baptizetur ritu catholico, a parentibus, si fieri possit, concordi ratione electo." This canon was not included as such in the 1982 *Schema* while it does appear, with some variations, in c. 111 (cf. commentary) in book I, tit. VI.

853 **Aqua in baptismo conferendo adhibenda, extra casum necessitatis, benedicta sit oportet, secundum librorum liturgicorum praescripta.**

Apart from a case of necessity, the water to be used in conferring baptism is to be blessed, in accordance with the provisions of the liturgical books.

SOURCES: c. 757; *SC* 70; OBP *Prae* gen., 21; *Prae*, 18, 28; RCIA *Prae*, 28, 29, ch. I, 208, 210

CROSS REFERENCES: cc. 843 § 2, 846, 850, 854, 860, 861, 862

COMMENTARY

María Blanco

Interpreting this canon *a sensu contrario*, and in relation with the text of cc. 857, 860–862, one observes that the requirements demanded by the legislator for the valid administration of baptism are minimal. As a result, the use of water that has not been blessed does not affect the validity of the sacrament but simply its legality.

The most concise provisions established for the regulation of this issue are collected in the liturgical books to which we are referred by the *CIc*. Those books establish that the water must be natural and clean in order to express the truth of the sign and even for reasons of hygiene (*Rite of Baptism for Children*, 33). The Catechism explains it in the following terms: "*Water.* The symbolism of water signifies the Holy Spirit's action in Baptism, since after the invocation of the Holy Spirit it becomes the efficacious sacramental sign of new birth: just as the gestation of our first birth took place in water, so the water of Baptism truly signifies that our birth into the divine life is given to us in the Holy Spirit." As "by one Spirit we were all baptized," so we are also "made to drink of one Spirit" (1 Cor 12: 13). Thus the Spirit is also personally the living water welling up from Christ crucified (cf. Jn 19: 34; 1 Jn 5: 8) as its source and welling up in us to eternal life (cf. Jn 4: 10–14; 7: 38; Ex 17: 1–6; Isa 55: 1; Zech 14: 8; 1 Cor 10: 4; Rev 21: 6; 22: 17)" (CCC, 694).

Moreover, and in the case where the baptistry is built in such a way that it uses a living source of water, the current of water must be blessed (*Praenotanda generalia*, 21).

854 Baptismus conferatur sive per immersionem sive per infusionem, servatis Episcoporum conferentiae praescriptis.

Baptism is to be conferred either by immersion or by pouring, in accordance with the provisions of the Bishops' Conference.

SOURCES: c. 758; OBP *Prae* gen., 22, 30, *Prae*, 18; RCIA 32, 220

CROSS REFERENCES: cc. 455 § 1, 853

COMMENTARY

María Blanco

"This sacrament is called *Baptism*, after the central rite by which it is carried out. To baptise (Greek *baptizein*) means to 'plunge' or 'immerse;' the 'plunge' into the water symbolises the catechumen's burial into Christ's death from which he rises up by resurrection with him (cf. Rm 6: 3–4; Col 2: 12) as a 'new creature' (2 Cor 5: 17; Gal 6: 15)" (CCC, 1214). This is the way in which the *Catechism of the Catholic Church* expresses it, trying to highlight that this sacrament means the descent of the Christian to the grave, dying to sin with Christ (cf. also CCC, 628).

It is the competence of the bishops' conference to determine the specific mode to be used. And, in the *Praenotanda generalia* (cf. no. 22) it is stated that, while it is possible to use both rites according to the Law, immersion is more suitable to signify the death and resurrection of Christ, just as Saint Thomas had written in his day: "Dicendum est quod immersione expressius repraesentatur figura sepulturae Christi, et ideo hic modus est laudabilior."[1]

However, it should not be forgotten that immersion has always had a passive meaning: the catechumen was submerged, he did not submerge himself, something which was, moreover, the practice of some ritual baths.[2] In any case, taking into account the circumstances and traditions that concur, the RCIA, 32 provides that the rite to be chosen is the one in

1. *S. Th.*, III, q. 66, a. 7 ad 2.
2. A. HAMMAN, *El Bautismo y la Confirmación* (Barcelona 1977), p. 204.

which it is better understood that the bath is not only a purification rite, but the sacrament of union with Christ.

In the case of Spain, the bishops' conference has established: "follow the custom widespread in Spain of baptism by infusion, just as it is stated in the Ritual approved for that purpose by this Bishops' Conference."[3]

3. Decr. February 22, 1988, in *BOCEE* 18 (1988), p. 47 (cf. *Pamplona Com*, p. 1194). Cf. also J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al C.I.c.* (Milan 1990).

855 Curent parentes, patrini et parochus ne imponatur nomen a sensu christiano alienum.

Parents, sponsors and parish priests are to take care that a name is not given which is foreign to christian sentiment.

SOURCES: c. 761; RCIA 26, 88, 203–205

CROSS REFERENCES: c. 877

COMMENTARY

María Blanco

The *right to a name* finds its *raison d'être* in the need to identify and individualize each one of the persons who live in society. The civil doctrine tends to frame it within the rights of the personality[1]; Rodríguez Castro has written, in this sense, that the imposition of a name constitutes an inevitable demand of the development of the personality in the social sphere, and therefore, it is protected by the Law as a form of social human life.[2]

This, however, is not correctly applicable to names within the scope of the canonical system. Neither the *CIC* nor the canonical legislation in general regulates names by means of its own system. In this matter, the Church respects civil custom; and "the canonical exhortations and prescriptions about the imposition of names to persons respond to religious motivations, especially to the fact that the recipients of baptism be distinguished by the use of a name that reveals his condition as a Christian, particularly in cases of conversion, and to adopt as a pattern and model the virtues of the saint, martyr or confessor of the faith whose name is taken."[3] The CCC alludes to this subject in the following terms: "The sacrament of Baptism is conferred 'in the name of the Father and of the Son and of the Holy Spirit' (Mt 28, 19). In Baptism, the Lord's name sanctifies humankind, and the Christian receives his name in the Church. This can be the name of a saint, that is, of a disciple who has lived a life of exemplary fidelity to the Lord. The patron saint provides a model of charity; we

1. Cf., among others: M. ALBALADEJO, *Derecho Civil*, I, vol. II (Barcelona 1991), pp. 53–62; L. DÍEZ-PICAZO-A. GULLÓN, *Sistema de Derecho Civil*, vol. I (Madrid 1988), pp. 231ff.
2. Cf. J. RODRÍGUEZ CASTRO, "El nombre civil propio de las personas físicas y el Registro Civil," in *Actualidad Civil* 1 (1988), p. 1001.
3. M. LÓPEZ-ALARCÓN, "Influencia canónica en la regulación jurídica del nombre propio," in *Pretor* 9 (1976), p. 6.

are assured of his intercession. The 'baptismal name' can also express a Christian mystery or Christian virtue" (CCC, 2156).

The Rite of Christian Initiation of Adults allows the imposition of a name according to the civil custom of the region as long as it has a Christian sense (RCIA 203).

In short, the baptismal name does not have the same nature nor the same juridical function as the civil name; moreover, its imposition does not constitute a juridical obligation *stricto sensu*. From the literal sense of the canon follows that the prescriptions therein contained are rather a caution to be entrusted primarily to the parents and godparents, and only secondarily to the parish priest, in contrast with the statements set forth in c. 761 of the *CIC*/1917, where it was established that: "Pastors shall see to it that a Christian name be given the person baptized; but if they are not able to prevail in this matter, they shall add to the name chosen by the parents the name of some saint and they shall record both names in the baptismal register."

856 **Licet baptismus quolibet die celebrari possit, commendatur tamen ut ordinarie die dominica aut, si fieri possit, in vigilia Paschatis, celebretur.**

Though baptism may be celebrated on any day, it is recommended that normally it be celebrated on a Sunday or, if possible, on the vigil of Easter.

SOURCES: c. 772; OBP *Prae* gen., 6, *Prae* 9, 29; *DPMB* 86a; RCIA 49, 55, 59, 244, 343

CROSS REFERENCES: cc. 867, 1010, 1246

COMMENTARY

María Blanco

The legislator recommends that baptism be performed on a Sunday, or, if possible, on the vigil of Easter since it is not a private act but rather the sacrament of entrance to the Church. "To express clearly the paschal nature of baptism, it is recommended that it be celebrated on the paschal vigil, or on a Sunday, which is the day in which the Church commemorates the resurrection of the Lord. On Sundays, baptism may also be celebrated during the Mass, so that all the community may participate in the rite and the relationship between baptism and the Holy Eucharist may be more clear; however, this should not be done too frequently" (OBP, 9). The Easter Vigil is alluded to also by tradition, since, for centuries, it has been preeminently considered as the time for baptism.

Furthermore, with respect to this subject matter, the specific prescription of c. 867 § 1 must be taken into account, which states "Parents are obliged to see that their infants are baptised within the first few weeks. As soon as possible after the birth, indeed even before it, they are to approach the parish priest to ask for the sacrament for their child, and to be themselves duly prepared for it." And § 2 of this same canon adds that "if the infant is in danger of death, it is to be baptised without any delay."

In summary, the exhortation contained in the canon under discussion makes clear that baptism brings about insertion into the mystery of the risen Christ.[1]

1. Cf. E. TEJERO, commentary on c. 856, in *Pamplona Com.*

857 **§ 1. Extra casum necessitatis, proprius baptismi locus est ecclesia aut oratorium.**

§ 2. Pro regula habeatur ut adultus baptizetur in propria ecclesia paroeciali, infans vero in ecclesia paroeciali parentum propria, nisi iusta causa aliud suadeat.

§ 1. Apart from a case of necessity, the proper place for baptism is a church or an oratory.

§ 2. As a rule and unless a just reason suggests otherwise, an adult is to be baptised in his or her proper parish church, and an infant in the proper parish church of the parents.

SOURCES: § 1: c. 773; OBP *Prae* gen., 24–26, *Prae*, 10–13
§ 2: *SCDW* Resp., 19 aug. 1970; OBP *Prae* 1

858 **§ 1. Quaevis ecclesia paroecialis baptismalem fontem habeat, salvo iure cumulativo aliis ecclesiis iam quaesito.**

§ 2. Loci Ordinarius, audito loci parocho, potest ad fidelium commoditatem permittere aut iubere, ut fons baptismalis habeatur etiam in alia ecclesia aut oratorio intra paroeciae fines.

§ 1. Each parish church is to have a baptismal font, without prejudice to the same right already acquired by other churches.

§ 2. The local Ordinary, after consultation with the local parish priest, may for the convenience of the faithful permit or order that a baptismal font be placed also in another church or oratory within the parish.

SOURCES: § 1: c. 774 § 1; CodCom Resp., 12 nov. 1922, IV (*AAS* 14 [1922] 662); OBP *Prae* 10
§ 2: c. 774 § 2; OBP *Prae* 11

CROSS REFERENCES: cc. 105, 212 § 2, 213, 516, 518, 530, 851,2°, 859–862

COMMENTARY

María Blanco

Canon 857 initiates an exhaustive regulation of the proper place for the administration of baptism. "Performed initially out in the open, preferably in a natural stream of water, in a river, baptism was moved later to an *ad hoc* building: the baptistry."[1]

Reference made to the parish church is justified because: 1) of the particular character recognized to the parish in the Code as center of initiation of the spiritual and sacramental life of the faithful; 2) it is normally in a parish where the faithful continue their sacramental itinerary; 3) in the parish it is possible to develop an effective baptismal pastoral program. In this program, the parents may receive the appropriate means for an adequate preparation of their children's baptism (cf. c. 851,2°).[2] Thus we can understand the provisions set forth in c. 530,1°, by virtue of which the administration of baptism is found within the functions especially entrusted to the parish priest.

The *Ordo Baptismi Parvulorum* no. 10 establishes: "Ordinarily Baptism shall be celebrated in the parish church, which must have a baptismal font; in this way, it will be clearly seen that Baptism is a sacrament of the faith of the Church and of incorporation to the people of God." Moreover, "the baptistery, that is to say: the place where the water springs from the baptismal font, or simply, is permanently placed in the font, must be reserved for the sacrament of Baptism, and must be truly dignified, so that it is clearly seen as the place where Christians are reborn from the water and the Holy Spirit. Whether it is located in a chapel inside or outside of the church, or in any part of the church, in plain view of the faithful, it must be disposed in such a way as to allow a numerous group to participate comfortably" (*Praenotanda generalia*, 25). The Instruction *Inter Oecumenici*, to apply correctly the Constitution *Sacrosanctum Concilium*, also sets forth guiding norms so that the dignity of the sacrament may be clear (*IOe* 99).

The connection between the parish church and the baptistry responds, in addition to liturgical reasons, to reasons of good administration[3] in order to demarcate the responsibilities of the parish in relation to baptism. "In fact, the determination of the church where baptism must be administered facilitates, besides the preparation of adults, parents, and godparents, the legitimate exercise of the right to request the sacrament,

1. A. HAMMAN, *El Bautismo y la Confirmación* (Barcelona 1977), p. 203.
2. Cf. A. MONTAN, "I sacramenti dell'inizazione christiana," in *I sacramenti della Chiesa* (Bologna 1989), pp. 36–37.
3. Cf. E. TEJERO, commentary on cc. 857–860, in *Pamplona Com.*

as well as the verification that in each case all the circumstances of competence and legitimization are present for the administration of Baptism."[4]

Obviously, the legislator has wished to facilitate the exercise of this right as much as possible, to the point that the comfort of the faithful is enough reason for the local ordinary to allow, and even command, that there be a baptismal font in another church or oratory within the parish boundaries. The provisions of c. 858 § 1 *in fine* are also to be interpreted in this way. In other words, given that it is obligatory for every parish church, and also for quasiparishes (cf. c. 516), to have a baptismal font, on the assumption that before the Code came into effect there may have been another church with exclusive right, that right becomes cumulative with the right of the parish church.

4. Ibid.

859 **Si ad ecclesiam paroecialem aut ad aliam ecclesiam vel oratorium, de quo in can. 858, § 2, baptizandus, propter locorum distantiam aliave adiuncta, sine gravi incommodo accedere vel transferri nequeat, baptismus conferri potest et debet in alia propinquiore ecclesia vel oratorio, aut etiam alio in loco decenti.**

If, because of distance or other circumstances, the person to be baptised cannot without grave inconvenience go or be brought to the parish church or the oratory mentioned in can. 858 § 2, baptism may and must be conferred in some other church or oratory which is nearer, or even in some other fitting place.

SOURCES: c. 775

860 **§ 1. Praeter casum necessitatis, baptismus ne conferatur in domibus privatis, nisi loci Ordinarius gravi de causa id permiserit.**

§ 2. In valetudinariis, nisi aliter Episcopus dioecesanus statuerit, baptismus ne celebretur, nisi in casu necessitatis vel alia ratione pastorali cogente.

§ 1. Apart from a case of necessity, baptism is not to be conferred in private houses, unless the local Ordinary should for a grave reason permit it.

§ 2. Unless the diocesan Bishop has decreed otherwise, baptism is not to be conferred in hospital, except in a case of necessity or for some other pressing pastoral reason.

SOURCES: § 1: c. 776; SCDS Resp., 22 iul. 1925 (*AAS* 17 [1925] 452); OBP *Prae* 12
§ 2: OBP *Prae* 13

CROSS REFERENCES: cc. 530,1°, 852 § 2, 857, 858, 859, 860, 862

COMMENTARY

María Blanco

1. The casuistry referred to in the *CIC* is varied, but in this way the legislator shows the gradation that must be followed for the licit

celebration of the sacrament. Therefore, one should refer to the following places, in order of priorities: the parish church, an oratory, a dignified place.[1]

2. Canons 859 and 860 allude to the celebration of baptism under special circumstances, and set forth very flexible guidelines that must be combined for their interpretation with pastoral and juridical criteria. Sometimes these criteria are somewhat imprecise, and perhaps intentionally imprecise, thus addressing the varied circumstances in which these norms will have to be applied.

More precisely, the special cases may be summed up as follows:

a) *Grave inconvenience* (c. 859): originated by circumstances that make it difficult for the baptized to travel to the parish church or to the assimilated church *in iure* for the baptism. Distance (remoteness) is cited as an example. This situation empowers the minister to administer the sacrament in a closer church or oratory, other than the parish church or other than those set forth in c. 858 § 2, and even in another decent place. The expression *aliave adiuncta* allows the minister *ad mentem legislatoris* to judge, in each case, the appropriateness of administering the baptism in a place other than the parish church.

b) *Baptism in private residences* (c. 860 § 1): except in cases of necessity (a vague concept itself) the canon expressly prohibits the administration of baptism in private homes (cf. c. 862). Moreover, it is necessary under this assumption to obtain a permit from the ordinary, who must not grant it without grave cause. The *Ritual for the Baptism of Children*, 51 forbade the celebration of these baptisms unless there was danger of death; however, the SCSDW ordered the introduction of suitable changes, so that in the current no. 12 of the *Ordo* it establishes: "Praeter casum necessitatis Baptismus ne celebretur in domibus privatis, nisi Ordinarius loci gravi de causa id permiserit."[2] In any case, determination of the gravity of the cause is the competence of the ordinary.

c) *Baptism in hospitals* (c. 860 § 2): according to c. 858 § 2 it is possible for a clinic or a hospital center to have a baptismal font. For the ordinary to grant the appropriate permission, besides listening to the parish priest, he must take into consideration the conditions of the place and the form in which the rite may be celebrated with fitting dignity. If these conditions do not exist, permission must be refused.[3] If there is a baptistry, the general principle as far as the administration of baptisms in hospitals is clear: "baptismus ne celebretur."

1. Cf. E. TEJERO, commentary on c. 856, in *Pamplona Com.*
2. Cf. SCDF, "Variationes in libros liturgicos ad normas Codicis Iuris Canonici nuper promulgati introducendae," September 12, 1983, in *Notitiae*, 19 (1983), p. 547.
3. Cf. SCSDW, Resp. August 19, 1970, in *LE Ecclesiae post Codicem Iuris Canonici editae* (Rome 1972), p. 5876.

However, it is important to note that, excepting, of course, cases of necessity, the *CIC* accepts expressly and without reservations that the specific legislator may justify something else in relation to baptisms in hospitals. This demonstrates once more the great sensitivity with which the *CIC* covers the different circumstances of each specific region or place.

The interpretation of the expression *vel alia ratione pastorali cogente* poses greater difficulties, because of its ambiguity. To my understanding, the determination regarding the existence of this pastoral reason that justifies baptism in the hospital corresponds to the minister, who *ad mentem legislatoris* must take into consideration whether, in the specific case, the *salus animarum* demands the administration of baptism away from the parish church.

The *Ordo* for this assumption demands two cautions: to advise the parish priest (although it does not say when) and to prepare the parents adequately and in advance (cf. OBP, 13).

CAPUT II
De Baptismi ministro

CHAPTER II
The Minister of Baptism

861 **§ 1. Minister ordinarius baptismi est Episcopus, presbyter et diaconus, firmo praescripto can. 530, n. 1.**

§ 2. Absente aut impedito ministro ordinario, licite baptismus confert catechista aliusve ad hoc munus ab Ordinario loci deputatus, immo, in casu necessitatis, quilibet homo debita intentione motus solliciti sint animarum pastores, praesertim parochus, ut christifideles de recto baptizandi modo edoceantur.

§ 1. The ordinary minister of baptism is a Bishop, a priest or a deacon, without prejudice to the provision of can. 530 n. 1.

§ 2. If the ordinary minister is absent or impeded, a catechist or some other person deputed to this office by the local Ordinary, may lawfully confer baptism; indeed, in a case of necessity, any person who has the requisite intention may do so. Pastors of souls, especially parish priests, are to be diligent in ensuring that Christ's faithful are taught the correct way to baptise.

SOURCES: § 1: cc. 738, 741; *LG* 26, 29; *PO* 5; *SDO* 22, 1; OBP *Prae* gen. 11
§ 2: c. 742; OBP *Prae* gen., 16, 17, ch. IV et V; RCIA ch. III

CROSS REFERENCES: cc. 230 §§ 2 et 3, 530,1°, 843, 845, 857, 883

COMMENTARY
María Blanco

1. The basic characteristic of the minister's intervention is the same in all the sacraments; he acts *in persona Christi* and the effect is always the gift of Christ, Himself, not that of the man who makes the sign. In

other words, the minister performs the sacramental action in the name of Christ, acts the rite, applies the matter of the sacrament and pronounces, accordingly, the words of the form. He does all this in the name of Christ and by the power of the Holy Spirit; for that reason, his nature is purely instrumental.[1]

The *CIC* does not distinguish between a private baptism and a solemn one, a distinction the *CIC*/1917 made to refer to a difference in rites and ceremonies. Thus, a baptism was considered solemn when it followed the rites and ceremonies set forth in the liturgical books (cf. c. 737 *CIC*/1917). In theological thinking, this distinction was justified mainly in regard to the minister; in solemn baptism, the ordinary minister was the priest, and in private baptism, which took place in case of necessity, the minister was anyone with the same intention as the Church.

2. According to the current canonical regulations, the ordinary minister (bishop, presbyter or deacon) is responsible for administering baptism according to the ministry received (c. 861 § 1). However this duty belongs to the parish priest, since the function has been entrusted to him in a special way (cf. c. 530,1°, to which c. 861 § 1 refers).

In fact, it is understood that the *bishop* is the ordinary minister of baptism because, marked with the fullness of the sacrament of orders, he is the administrator of the grace of the supreme priesthood, and disposes for that reason the administration of baptism through which participation in the regal priesthood of Christ is conferred (cf. *LG* 26). It is the mission of the *presbyters*, in turn, to bring man into the people of God precisely by means of baptism (cf. *PO* 5). Finally, the *deacons*, according to the provisions set forth in this canon, are the ordinary ministers of baptism; there is no need for an express request by the ordinary, as was provided for in *SDO*, 22,2°.

3. As for the norms applicable for the lawful administration of baptism under special circumstances, § 2 of c. 861 makes the following distinctions:

a) *When the ordinary minister is impeded or absent.* The concept of absence is not defined by the legislator; however, applying the provisions established in c. 1116 § 1,2° by analogy, the ordinary minister may be considered absent when it is impossible to reach him without great difficulty, and it can be prudently expected that this situation will last one month. Application of this criterion would allow parents to baptize their children within their first weeks of life (cf. c. 867).

In either of these two cases, a catechist or any other member of the faithful assigned by the bishop for such a function, would lawfully administer baptism (cf. c. 230 § 2). On the other hand, the replacement *ut talis* (cf. c. 230 § 3) would not be applicable, since the simple absence or

1. Cf. A. URRU, "Ministro straordinario del battesimo: fondamento di tale potestà," in *Questioni Canoniche* (Milan 1984), p. 200.

impediment of the ordinary minister is, in principle, different from a case of necessity. Although there may be a lack of clergy, in order for this replacement not to be a seriously unlawful act, it is necessary that both circumstances occur jointly,[2] which is exactly the situation in the following hypothesis.

b) *In case of necessity.* By "necessity" must be understood not only the danger of death, but according to the statements of the previous paragraph, the prolonged absence of the sacred ministers. Baptism may then be conferred not only by any member of the faithful, but also by "any person," as long as he/she has the correct intention or, in other words, the intention of doing what the Church does.

The Church has always affirmed this criterion, justified by the fact that baptism is necessary for salvation. As a matter of expediency, Saint Thomas says that, just as for the validity of the sacrament any water is a valid water, so any man is a valid minister.[3] In fact, as Hamman has written, "any human being, clergyman or layman, man or woman, baptized or not, may validly and lawfully confer the sacrament of baptism. But no one can baptize himself. The only condition is to respect the matter and the form prescribed, and to have, at least in a vague way, the intention of doing what the Church does.

"This breadth addresses, at the same time, the redeeming will of God towards all men and the need of baptism for salvation. Christ selected not only the most common matter but also the broadest provisions for the administration of baptism."[4]

The *Praenotanda generalia*, 11, taking as a reference the provisions set forth in cc. 861 and 862, has established the following:

"The ordinary ministers of baptism are the Bishop, the presbyter and the deacon.

"1) Any time you celebrate this sacrament, remember that you are acting as the Church, in the name of Christ and by the power of the Holy Spirit. Be, then, diligent in the administration of the word of God and in the way in which you perform the sacrament."

2. Cf. J. HERVADA, commentary on c. 230, in *Pamplona Com.* Cf. Instr. EdM, art. 11.
3. Cf. *S. Th.*, III, q. 67 a. 5 c.
4. A. HAMMAN, *El Bautismo y la Confirmación* (Barcelona 1977), p. 216.

862 **Excepto casu necessitatis, nemini licet, sine debita licentia, in alieno territorio baptismum conferre, ne suis quidem subditis.**

Except in a case of necessity, it is unlawful for anyone without due permission to confer baptism outside his own territory, not even upon his own subjects.

SOURCES: c. 739

CROSS REFERENCES: cc. 102, 530,1°; 843

COMMENTARY

María Blanco

The norm contained in c. 862 is justified for reasons of good administration. Furthermore, it seems that, in principle, this permission , reasonably requested, should not be refused, since the administration of baptism is not a function reserved to the parish priest but rather one especially entrusted to him (cf. c. 530,1°).

For its part, the OBP (*Praenotanda generalia,* 11) refers to this issue practically in the same terms as c. 862, but not without first asserting, thus putting us face to face with a criterion that must always be taken into account in this matter: "Also avoid anything that may be reasonably interpreted by the faithful as discrimination."

863 **Baptismum adultorum, saltem eorum qui aetatem quattuordecim annorum expleverunt, ad Episcopum dioecesanum deferatur ut, si id expedire iudicaverit, ab ipso administretur.**

The baptism of adults, at least of those who have completed their fourteenth year, is to be referred to the diocesan bishop, so that he himself may confer it if he judges this appropriate.

SOURCES: c. 744; RCIA 44

CROSS REFERENCES: cc. 851 § 1, 866, 882

COMMENTARY

María Blanco

The foundation of this norm is the relationship between the meaning of episcopal ministry and that of baptism as entry to the Church, taking into account the fact that the entire process of Christian initiation of adults is situated, in a special form, within the jurisdiction of the diocesan bishop,[1] as set forth by the provisions of the RCIA, to which c. 851 § 1 refers the reader.

In this sense, it is particularly meaningful that no. 44, says: "It is the responsibility of the bishop, himself or through his delegate, to organize, counsel and promote the pastoral education of the catechumens and to admit the candidates to the election and to the sacraments ... and in the Paschal Vigil confer the sacraments of initiation, at least to those who have attained fourteen years of age." This is consistent with the provisions of c. 866, because, if there is no grave reason to the contrary, an adult must receive the sacrament of confirmation immediately after baptism, and the ordinary minister of confirmation is the bishop (cf. c. 882).

By the same token, Tejero believes that this provision "is understandable due to the extraordinary character of the adult baptism, since the baptism of children is an immemorial practice of local Churches of solid Christian tradition."[2]

1. Cf. C.J. ERRÁZURRIZ, "Il battesimo degli adulti nell'attuale diritto canonico," in *Monitor Ecclesiasticus*, 115 (1990), pp. 107–108.
2. E. TEJERO, commentary on cc. 861–863, in *Pamplona Com.* Cf. Instr. *Pastoralis Actio*, 4–10, in *AAS* 72 (1980), pp. 1139–1143.

CAPUT III
De baptizandis

CHAPTER III
The Persons to Be Baptised

864 **Baptismi capax est omnis et solus homo nondum baptizatus.**

Every unbaptised person, and only such a person, can be baptised.

SOURCES: c. 745 § 1

CROSS REFERENCES: cc. 96, 840, 841, 842, 843 § 1, 849, 851

COMMENTARY

María Blanco

1. This canon is the threshold to frame and introduce chap. III: "The Persons to Be Baptized." This is an uncharacteristic chapter, although the subject matter would have made it possible to treat the issue in a more homogeneous and rigorous fashion. For example, c. 870 is nothing more than a special situation within the general norm related to the baptism of children.

2. The provision contained in c. 864 is intrinsically linked to c. 849 (see commentary). Furthermore, this is its clarification, so that the lines on which the interpretation is structured are the same, to wit:

a) the necessity of baptism for salvation;

b) the ontological effects produced: it makes man the son of God, marking him with an indelible seal;

c) the juridical effects it carries: man becomes a member of the faithful in the Church, with appropriate rights and duties (see commentary on c. 204).

Suffice it to reiterate here that baptism is a right of a person, *omnis et solus homo*, precisely because its reception, in fact or at least in wish, is necessary for salvation (cf. c. 849), a matter addressed with great clarity in *Lumen gentium* 14.

In short, in this canon the legislator protects the universal capacity for baptism founded on the redeeming will of God. Irrelevant, in this context, are circumstances such as age, juridical residence, relationship, etc., (cf. cc. 97–112), which effectively determine and modify the canonical condition of the persons, their capacity to act, but which, for purposes of baptism, never alter their capacity to become a member of the Church: to become a member of the faithful (*christifidelis*).

3. In addition to the fact that baptism is based on the redeeming will of Christ, it must be stressed that the elevation of man to the supernatural order has an influence upon man's social dimension. In fact, as Hervada has written, "For Christianity, the dignity of man has a double dimension: natural and supernatural, image of God and son of God. In Christianity, both dimensions fuse into one, because to be a son of God is to be transformed by grace. A simple, yet magnificent, principle."[1]

The person who joins the Church becomes a part of the "chosen race, a royal priesthood" (1 Pt 2:9) in such a way that he is indelibly marked by this sacramental link, thus the canon refers to the *unbaptized person, and only such a person.*

1. J. HERVADA, "El hombre y su dignidad en palabras de Mons. Escrivá de Balaguer," in *Fidelium Iura* 2 (1992), p. 12.

865 **§ 1. Ut adultus baptizari possit, oportet voluntatem baptismum recipiendi manifestaverit, de fidei veritatibus obligationibusque christianis sufficienter sit instructus atque in vita christiana per catechumenatum sit probatus; admoneatur etiam ut de peccatis suis doleat.**

§ 2. Adultus, qui in periculo mortis versatur, baptizari potest si, aliquam de praecipuis fidei veritatibus cognitionem habens, quovis modo intentionem suam baptismum recipiendi manifestaverit et promittat se christianae religionis mandata esse servaturum.

§ 1. To be admitted to baptism, an adult must have manifested the intention to receive baptism, must be adequately instructed in the truths of the faith and in the duties of a christian, and tested in the christian life over the course of the catechumenate. The person must moreover be urged to have sorrow for personal sins.

§ 2. An adult in danger of death may be baptised if, with some knowledge of the principal truths of the faith, he or she has in some manner manifested the intention to receive baptism and promises to observe the requirements of the Christian religion.

SOURCES: § 1: c. 752 § 1; SCHO et SCPF Resp., 19 feb. 1938; RCIA 20, 49, 62
§ 2: c. 752 § 2; RCIA 279

CROSS REFERENCES: cc. 788, 851,1°, 852, 883, 1170, 1183

COMMENTARY

María Blanco

1. The *CIC* establishes some requirements for the baptism of children and others for the baptism of adults (cf. c. 852), who must be previously admitted to the catechumenate (c. 851,1°). For this reason, the catechumen may be considered a subject of the canonical system into which he is incorporated through a manifestation of will, from which derives a peculiar juridical statute (cf. c. 788 § 3).[1] This manifestation of will constitutes a requirement *ad validitatem* of the celebration of baptism:

1. P. LOMBARDÍA, "Estatuto jurídico del catecúmeno según los textos del Concilio Vaticano II," in *Escritos de Derecho Canónico* II (Pamplona 1973), p. 229.

"oportet voluntatem baptismum recipiendi manifestaverit." In other words, "candidates are not purely passive in the baptismal action: while they are incapable of redeeming themselves, grace cannot save them without their consent."[2]

2. The requirements that affect not only the validity but also the liceity of the sacrament can be summarized as follows: 1) sufficient instruction regarding the truths of the faith and Christian obligations; 2) experience in Christian life; and 3) sorrow for their sins. Therefore, in order to receive a fruitful baptism, besides the minimal knowledge of the truths of the faith, certain moral dispositions are required: faith and conversion, even if imperfect (these are the goals to which the organization of the catechumenate are expressly addressed).

Along these lines, an Instruction of the Holy Office addressed to the Apostolic Vicariate of Tche-Kiang in August of 1860 stated: "At enim vero fides et paenitentia in adulto requiruntur, ut licite sacramentum suscipiat et fructum sacramenti consequatur; intentio vero necessaria est ad illud valide consequendum, adeo ut qui baptizatur adultus sine fide ac paenitentia illicite quidem, at valide baptizatur, et contra, qui baptizatur absque voluntate sacramentum suscipiendi nec licite nec valide baptizatur" (Dz, 2837).

This emphasizes that the right to receive baptism, which comes from its necessity (cf. c. 849), is inseparably linked to the duty of undergoing the corresponding appropriate preparation, since it characterizes in great detail the juridical situation of the catechumen in the Church (cf. c. 206).

Tejero believes that "the instruction on the truths of the faith must include those truths required for salvation with absolute necessity: the existence of God, and God rewarding the righteous and punishing the wicked. Knowledge of the Incarnation of the Word and the Holy Trinity is probably required also with the same necessity. Moreover, it is clear that the catechumenate prior to Baptism must provide a wider formation regarding the truths of the faith and the Christian life, on which the catechumen must be tested before receiving Baptism."[3]

Saint Thomas pondered the convenience of deferring baptism on the basis that adults may obtain justification through desire of baptism alone. He pointed out the following motives: "First, through a certain measure of prudence, lest the Church be deceived by granting baptism to those who request it fictitiously ... The object of this test, for those preparing to receive baptism, is to observe during some time their faith and customs. Secondly, this delay is appropriate for the good of the baptismal candidates, who need a certain amount of time to be fully instructed in the faith and trained in the Christian life. In third place, it is necessary for the reverence

2. A. HAMMAN, *El Bautismo y la Confirmación* (Barcelona 1977), p. 182.
3. E. TEJERO, commentary on c. 865, in *Pamplona Com.*

of the sacrament itself; being admitted to baptism in the most important solemn days, Easter and Pentecost, the catechumens will receive it with greater devotion. Nevertheless, this delay shall be omitted when two circumstances coincide: First, when the baptismal candidates are already perfectly instructed in the faith and are ready to receive baptism ... Second, due to illness or any other danger of death. San Leo states: 'Anyone who is in urgent need because of danger of death, be it due to illness, persecution or shipwreck, must be baptized at any time.'"[4]

Prolonging the period of the catechumenate depends on other circumstances, besides the grace of God, including the cooperation of the catechumen (cf. RCIA, 20).

3. From reading this canon, it may be deduced that individual right is one of the essential components of the current system of canonical sources regarding baptism (cf. cc. 788 § 3, 851,1°). For this reason, the adult must have "been tested in the Christian life." Similarly, because, in addition to original sin, the candidate may have personal sins, he is exhorted to have sorrow for his sins.

4. Paragraph 2 contemplates the case of danger of death, a situation that must not be confused with the one set forth *in articulo mortis* (in imminent danger of death) which, evidently, is a much more extreme situation. In fact, the situation of *danger of death* includes cases where there is no proximate danger of death. Having said this, it must be emphasized that this canon contemplates both the person who is still capable of requesting baptism and the one who is no longer able to request it: "Lo si evince dal tempo verbale usato per riferirsi alla manifestazione dell'intenzione di ricevere il battesimo (*manifestaverit*)."[5]

In imminent danger of death, the RCIA, 279 establishes: "He who has already been received as a catechumen, must promise that, once he has recovered his health, he will complete the normal catechesis. If he is not a catechumen, it is advisable that the baptismal candidate give a clear signal of conversion to Christ and renunciation of pagan cults, and that he not be linked to moral obstacles in his life (for example, 'simultaneous' polygamy, etc.); he must promise, in addition, that after recovering his health, he will follow the appropriate initiation course in its entirety."

This interpretation agrees with the old c. 752, which established: "(§ 2) However, if someone is in danger of death, and cannot be more thoroughly instructed in the principal mysteries of the faith, it suffices, for the conferral of baptism, that the person in some way manifest a belief in them and seriously promise to observe the precepts of the Christian religion. (§ 3) And if not even being able to request baptism, but having very

4. *S. Th.*, III, q. 68, a. 3.
5. C.J. ERRÁZURIZ, "Il battesimo degli adulti nell'attuale diritto canonico," in *Monitor ecclesiasticus* 115 (1990), note 57.

probably manifested before or manifesting in that moment an intention to receive it, the person ought to be conditionally baptized; if afterwards the person regains health and doubt regarding the validity of the administered baptism persists, it should be administered again conditionally." In other words, it does not seem that in the current legislation there has been a substantive change, but rather a simplification of the casuistry.

5. Regarding intention, *habitual* intention is sufficient: that is, intention once given is not withdrawn, and current or virtual intention is, therefore, unnecessary. Furthermore, the most common opinion is that a positive *intentio interior* is required, that is, the presence of an intention whose objective is the real celebration of baptism, and the mere lack of a contrary will is insufficient.[6]

6. The minimum degree of faith in the subject takes on great ecumenical importance, although the *CIC* does not allude to baptism celebrated in a non-Catholic ecclesial community.[7]

7. Finally, in accordance with the different requirements (*ad validitatem* and *ad liceitatem*) established by the legislator, a case could arise where, the intention being present, the appropriate dispositions to receive the redeeming effect of grace do not coincide. In that case, the effect of baptism is limited to the impression of the baptismal character, and the sacrament may be revived when the baptized is properly disposed.[8]

6. Cf. ibid., pp. 92–93.
7. Cf. ibid., p. 99.
8. Cf. ibid., p. 91.

866 **Adultus qui baptizatur, nisi gravis obstet ratio, statim post baptismum confirmetur atque celebrationem eucharisticam, communionem etiam recipiendo, participet.**

Unless there is a grave reason to the contrary, immediately after receiving baptism an adult is to be confirmed, to participate in the celebration of the Eucharist and to receive holy communion.

SOURCES: RCIA 34

CROSS REFERENCES: cc. 892 § 2, 863, 883

COMMENTARY

María Blanco

This canon is a manifestation of the unity that exists among the three sacraments of Christian initiation. This is a fact equally reflected in c. 883, which contemplates the baptism of adults when the bishop is baptizing.

Unlike the provisions established by c. 753 § 2 in the *CIC*/1917 ("Unless there are grave and urgent reasons to the contrary, the baptized adult is to attend the sacrifice of the Mass immediately after and to receive holy communion"), the necessity to receive confirmation and the Eucharist *immediately* after adult baptism is now established.

The 1980 *Schema* proposed that, instead of saying *just cause*, the canon say *grave cause*, and it was thus approved. Now, the minister must determine in each case if the necessary circumstances are present to speak properly of *grave cause* and, therefore, if it is necessary to defer confirmation, taking into account that the sacraments of Christian initiation constitute one unit (cf. c. 842 § 2), as is clearly stressed in the *Praenotanda generalia* no. 2: "the three sacraments of Christian initiation are ordered among themselves to bring to full development the faithful, who exercise the mission of all the Christian people in the Church and in the world."

867 **§ 1. Parentes obligatione tenentur curandi ut infantes intra priores hebdomadas baptizentur; quam primum post nativitatem, immo iam ante eam, parochum adeant ut sacramentum pro filio petant et debite ad illud praeparentur.**

§ 2. Si infans in periculo mortis versetur, sine ulla mora baptizetur.

§ 1. Parents are obliged to see that their infants are baptised within the first few weeks. As soon as possible after the birth, indeed even before it, they are to approach the parish priest to ask for the sacrament for their child, and to be themselves duly prepared for it.

§ 2. If the infant is in danger of death, it is to be baptised without any delay.

SOURCES: § 1: c. 770; SCHO Monitum, 18 feb. 1958 (*AAS* 50 [1958] 114); OBP *Prae* 8: 2 et 3; 25; SCDF Instr. *Pastoralis actio,* 20 oct. 1980 (*AAS* 72 [1980] 1137-1156)
§ 2: c. 771; OBP *Prae* 8, 1

CROSS REFERENCES: cc. 227, 850, 851,2°, 853, 857 § 1, 859, 860, 864, 868

COMMENTARY

María Blanco

1. To obtain a solid doctrinal foundation of the provisions contained in this canon, it is imperative to refer to the Instruction *Pastoralis Actio* of the SCDF. But, before we discuss it, it behooves us to stress that the issue being set forth here has provoked abundant literature in the Lutheran and Calvinist Churches, especially after a conference given by Karl Barth in 1943, in which he characterized the baptism of children as "an open wound on the side of the Church."[1] However, this statement fails from the moment that it is understood that the child *from birth* has his appointed place in the work of redemption; thus, "the dynamism of the parents' faith, the awareness of his mission, must dispose them to receive the child as having come from God to be conducted toward Him ... To baptize a child is to place him concretely in the Christian community, to surround him and sustain him with the *fides Ecclesiae*, the communion of saints, on

1. Cf. K. BARTH, "La doctrine ecclésiastique du baptême," in *Foi et vie* (1949), p. 47.

which the faith of the members is supported by the collective loyalty."[2] This means that, given the ecclesial, not only eschatological, goal of baptism, it is easy to understand the exhortation of the Church to baptize children as soon as possible.[3]

2. The principles on which all the baptismal pastoral provisions must be inspired are collected in *Pastoralis Actio*,[4] and they are: *a*) the recognition that baptism is necessary for salvation (it is a sign and instrument of God's love); *b*) some assurances must be established for the development of this gift.

Throughout the life of the Church, the Roman Pontiffs and the councils have often intervened to remind Christians about the duty of baptizing their children, "At the end of the IV century, the old custom of having children, as well as adults, baptized 'for the remission of sins' is opposed to the Pelagian doctrines. As had been emphasized by Origen and Saint Cyprian, before Saint Augustine, such a custom confirmed the faith of the Church in the existence of original sin, which, in turn, made the necessity of baptizing children seem even more obvious. Also intervening along these lines were Popes Siricius and Innocent I, and later, the Council of Carthage of 418 condemns 'those who deny that children just born of the mother's womb must be baptized,' and states that 'by virtue of the rule of faith' of the Catholic Church on original sin, 'also the youngest, those who have not yet been able to commit personally any sin, are truly baptized for the remission of sins, so that this regeneration may purify in them what they have received by generation.'"[5]

3. Once the objectives of baptism have been emphasized, it is necessary to allude to the pastoral problems that arise in reality, which the Instruction *Pastoralis Actio* addresses in detail. Therefore, the affirmation contained in no. 31 *in fine* gathers particular strength: "in regions where families of little faith or non Christian constitute the majority, to such a degree that it may be justified to implement, on the part of the bishops' conferences, a pastoral provision that provides for the deferment of baptism beyond the time determined by the general Law, the Christian families maintain all their right to have their own children baptized before. Then the sacrament will be administered as the Church intends and as is deserved by the faith and the generosity of these families." This 1980 Instruction, when referencing the "general Law," alludes to the *Praenotanda generalia*, 7 and the OBP, 8 §§ 3–4. When the *CIC* was promulgated, c. 867 § 1also protected the fundamental right of the parents to baptize their children within the first few weeks. This right shall not be limited or restricted by a particular law, at least not by a norm of lower rank than the *CIC* itself.

2. A. HAMMAN, *El bautismo y la confirmación* (Barcelona 1977), pp. 222–223.
3. Ibid.
4. Cf. SCDF, Instr. *Pastoralis Actio*, 28,1, in *AAS* 72 (1980), pp. 1139–1143.
5. Ibid., 6.

Intimately related to the topic of families of little faith is the issue of mixed marriages. In these cases, it is known that the Catholic spouse, besides being the protector of the faith, must do all within his or her power to have the children baptized and educated in the Catholic faith (cf. *FC* 78; c. 1125,1°).

In short, the administration of baptism must be carried out "in the first few weeks," as set forth in the canon under discussion. To set the appropriate moment, the OBP advises taking into account the following circumstances: *a*) the health of the child; *b*) the health of the mother (so that she may be present); *c*) the pastoral need: the time necessary for the preparation of the parents and the organization of the ceremony; but, in any case, "within the first few weeks after birth" (OBP, 8).

The first of these circumstances is the basis for the provision contained in § 2 of c. 867: "Si infans in periculo mortis versetur, sine ulla mora baptizetur;" and, therefore, the provisions set forth in c. 861 § 2 apply.

868 **§ 1. Ut infans licite baptizetur, oportet: (1) parentes, saltem eorum unus aut qui legitime eorundem locum tenet, consentiant; (2) spes habeatur fundata eum in religione catholica educatum iri quae si prorsus deficiat, baptismus secundum praescripta iuris particularis differatur, monitis de ratione parentibus.**

§ 2. Infans parentum catholicorum, immo et non catholicorum, in periculo mortis licite baptizatur, etiam invitis parentibus.

§ 1. For an infant to be baptised lawfully it is required:
1° that the parents, or at least one of them, or the person who lawfully holds their place, give their consent;
2° that there be a realistic hope that the child will be brought up in the catholic religion. If such hope is truly lacking, the baptism is, in accordance with the provisions of particular Law, to be deferred and the parents advised of the reason for this.

§ 2. An infant of catholic parents, indeed even of non-catholic parents, is lawfully baptised in danger of death, even if the parents are opposed to it.

SOURCES: § 1,1°: c. 750 § 2,1°; SCHO Resp., 20 mar. 1933; OBP *Prae* 5
§ 1,2°: c. 750 § 2; OBP *Prae* 3; SCDF Resp., 13 iul. 1970; SCDF Instr. *Pastoralis actio*, 20 oct. 1980, 30, 31 (*AAS* 72 [1980] 1154-1155)
§ 2: c. 750 § 1; OBP *Prae* 8, 1

CROSS REFERENCES: cc. 851,2°, 859, 867, 872

COMMENTARY

María Blanco

1. Regarding the contents of this canon, it must be taken into account on the one hand, the right/duty of the parents (see commentary on c. 867),[1] and on the other, the fact that in the case of children before the age of reason, the Church, by means of the parents and godparents, supplies their faith and their intention: "Therefore, when the parents of those who legitimately represent them are believers and both or one of them

1. Cf., e.g., MARTINELLI, "Il battesimo dei bambini," in *Monitor Ecclesiasticus* 115 (1990), p. 76.

consent to the baptism of their children, there is no reason whatsoever to deny or defer the administration of the sacrament to the children."[2]

Thus, it is understood, in principle, that the family who requests baptism for one of the children becomes the guarantor in his name; baptized children do not believe by themselves through a personal act, but rather through others: by the faith of the Church which communicates it to them. However, the Church recognizes the existence of limits to this practice since, except for danger of death, it does not accept the baptism of children without the permission of the parents and the assurance that they will receive a Catholic education.[3]

In relation to the paternal permission, consideration must be given to the provisions set forth in *Dignitatis humanae* 5: "Each family, as a society that enjoys a proper and fundamental right, has the right to freely order its domestic religious life under the direction of the parents. To these corresponds the right to determine the form of religious education that must be given to their children according to their own religious conviction" (cf. also *GE* 1 and 3).

2. Despite everything just stated, the case may arise of a minor with use of reason who, against the will of his or her parents, wishes to receive baptism. In this case, it must not be forgotten that, opposed against the right of the parents to educate their children, is the right of each person to receive baptism if he is well disposed. In principle, and as may happen with certain juridical actions (think, for example, of marriage), it does not seem to be necessary to wait for the age of majority and it would be sufficient in this case to take specific precautions: seriousness of the petition, possibility of receiving a Christian education and living a life according to it. In short, it is a matter of finding a balance between two fundamental principles: *a*) the necessity of baptism for salvation, and *b*) the necessity of establishing some assurances so that the gift of baptism may be recognized as such and the life of grace may develop in an appropriate environment. This brings forth the pastoral problem of grace conceived as a "life" that has to develop in a favorable environment (although it does not pose a problem as to the ontological grace). For this reason, the legislator has considered it more timely to defer the baptism. In any case, and taking into account the reasons previously set forth, if the necessary precautions are taken, there does not seem to be a reason for deferring the administration of baptism to a minor.

3. At times, the case may also arise of parents who, either are not prepared for the celebration of the baptism, or request baptism for their children without giving sufficient assurances that they will receive a Christian education, or even with the appearance that the gift of faith will

2. J. MANZANARES, *Nuevo derecho parroquial* (Madrid 1988), p. 137.
3. Cf. Instr. *Pastoralis Actio*, 14–15, in *AAS* 72 (1980), pp. 1139–1143.

be affected negatively. In this case, the bishops' conferences, to help the parish priests, may dictate provisions establishing a longer interval of time before the celebration (OBP, 25). Along these lines, *Pastoralis Actio* 30 stipulates that:

"Pastors may find themselves before parents who believe little and practice occasionally or even before non-Christian parents who, for reasons worthy of consideration, request baptism for their children.

"In this case, they must make an effort, through an insightful dialogue that is full of understanding, to arouse their interest in the sacrament that they are requesting, and advise them of the responsibility they are contracting.

"In fact, the Church cannot grant the wish of those parents, unless they assure in advance that, once baptized, the child will be able to take advantage of the Catholic education, demanded by the sacrament; the Church must have grounds for hoping that the baptism will produce its fruits.

"If the assurances that are offered are enough (for example, the selection of godparents and godmothers who seriously take care of the child or also, the support of the community of faithful, the priest will not be able to refuse or defer the administration of baptism, as is the case of children of Christian families. If, on the contrary, the assurances are not sufficient, it shall be prudent to postpone the baptism. But the pastors must remain in contact with the parents so that they may obtain, if possible, the conditions required on the part of the parents for the celebration of baptism. Finally, if this solution is not achieved either, as a final recourse, the registration of the child may be proposed with a view to a catechumenate during the school years."

A similar statement may be made in the case of the baptism of children of parents who live in an irregular marriage situation, such as Catholics joined by a simple civil marriage, and divorced persons who are remarried without the benefit of an annulment or dissolution.

4. Regarding the assurances, consideration must be given, as stated in the Instruction *Pastoralis Actio* 31, to "any promise that offers grounds for hoping for a Christian education." Here the legislator offers a broad margin, for the appreciation of the circumstances which exist in each particular case.

5. Finally, it is imperative to point out that the provision contained in § 2 of this canon, which is because "danger of death dispels the danger of future perversion of the child, who is removed from the *patria potestas* by death and not by baptism. Likewise, in danger of death the eternal salvation of the child prevails over the rights of the parents. The text of the canon does not refer only to immediate danger or imminent death, but also a situation where it is reasonably foreseen that the child will die

(within a shorter or longer time span) owing to a danger specific to the child, not one that is general or common."[4] In other words, given that baptism is an absolute good because it is necessary for salvation, it is established that a child in danger of death may be baptized even against the will of the parents.

4. E. TEJERO, commentary on c. 868, in *Pamplona Com.*

869 **§ 1. Si dubitetur num quis baptizatus fuerit, aut baptismus valide collatus fuerit, dubio quidem post seriam investigationem permanente, baptismus eidem sub condicione conferatur.**

§ 2. Baptizati in communitate ecclesiali non catholica non sunt sub condicione baptizandi, nisi, inspecta materia et verborum forma in baptismo collato adhibitis necnon attenta intentione baptizati adulti et ministri baptizantis, seria ratio adsit de baptismi validitate dubitandi.

§ 3. Quod si, in casibus de quibus in §§ 1 et 2, dubia remaneat baptismi collatio aut validitas, baptismus ne conferatur nisi postquam baptizando, si sit adultus, doctrina de baptismi sacramento exponatur, atque eidem aut, si de infante agitur, eius parentibus rationes dubiae validitatis baptismi celebrati declarentur.

§ 1. If there is doubt as to whether a person was baptised or whether a baptism was conferred validly, and after serious enquiry this doubt persists, the person is to be baptised conditionally.

§ 2. Those baptised in a non-catholic ecclesial community are not to be baptised conditionally unless there is a serious reason for doubting the validity of their baptism, on the ground of the matter or the form of words used in the baptism, or of the intention of the adult being baptised or of that of the baptising minister.

§ 3. If in the cases mentioned in §§ 1 and 2 a doubt remains about the conferring of the baptism or its validity, baptism is not to be conferred until the doctrine of the sacrament of baptism is explained to the person to be baptised, if that person is an adult. Moreover, the reasons for doubting the validity of the earlier baptism should be given to the person or, where an infant is concerned, to the parents.

SOURCES: § 1: c. 749
§ 2: cc. 750, 751; SCHO Resp., 15 nov. 1941; SCHO Resp., 28 dec. 1948 (*AAS* 41 [1949] 650); DE/1967 I: 12–14; RCIA appendix, 7
§ 3: DE/1967 I: 15, 18

CROSS REFERENCES: cc. 845, 850, 851, 852, 864, 865, 868, 875–878

COMMENTARY

María Blanco

This canon contains two different situations. On the one hand, it refers to the administration of baptism *sub condicione* (§ 1), and on the other, it establishes the general prohibition against conditionally baptizing those who already were baptized in a non-Catholic ecclesial community (§ 2). Finally, the legislator includes a precaution related to the instruction and information necessary when baptism must be conferred *sub condicione* (§ 3).

1. When is it possible to administer baptism conditionally? The *CIC* alludes to the case where there is "doubt" regarding either the fact that the baptism took place or its validity. This doubt must be a positive doubt.

The *Ordo admissionis valide iam baptizatorum in plenam communionem Ecclesiae Catholicae* discusses the topic in the following terms: "The sacrament of baptism cannot be repeated and, therefore, it is prohibited to confer baptism again *sub condicione*, unless there is a prudent doubt 'of the fact' or of the validity of the baptism already conferred. If after serious investigation because of a prudent doubt 'of the fact' or of the validity of the baptism already conferred, it seems necessary to repeat the baptism *sub condicione*, the minister shall explain in a timely fashion the reasons why in such a case baptism is conferred *sub condicione* and shall administer it in private.

"The local Ordinary must find out, in each case, which rites must be maintained upon conferring the baptism *sub condicione* and which must be omitted."[1]

To be certain, it is necessary to carry out diligent investigations, but if these do not produce certainty regarding the effective administration of the baptism or its validity, baptism shall be administered *sub condicione*, thus giving the opportunity to receive this sacrament (necessary for salvation). In short, the *sub condicione* characteristic highlights the indelible character of baptism and the resulting impossibility of its repetition (cf. c. 845 § 1).

2. Paragraph 2 of this canon contains a presumption of validity of baptism conferred within a non-Catholic Christian community. Regarding this topic, the decision of the SCHO of December 28, 1949[2] is especially clear. It establishes that baptism administered by the Disciples of Christ,

1. RCIA, Appendix, no. 7.
2. *AAS* 41 (1949), p. 650. Regarding Baptism in separated ecclesial communities, cf. DE/1993, 99.

Presbyterians, Congregationalists, Baptists, and Methodists, assuming the necessary matter and form, must be considered valid as long as in each particular case it is not proven otherwise.

3. Finally, the caution contained in § 3 emphasizes, not only the necessity of baptism for salvation, but also the necessary instruction to live an authentically Christian life.

870 **Infans expositus aut inventus, nisi re diligenter investigata de eius baptismo constet, baptizetur.**

An abandoned infant or a foundling is to be baptised unless diligent enquiry establishes that it has already been baptised.

SOURCES: c. 749

CROSS REFERENCES: cc. 849, 869 § 1, 876

COMMENTARY

María Blanco

This canon results from a joint application of provisions established in cc. 849 and 869 § 1. In other words, the legislator has only made explicit a specific situation within the general norms already cited; it is obvious that a foundling must be baptized. Similarly, it is obvious that, if it is already baptized, the baptism must not be repeated. Perhaps what the legislator wanted to say is that if, after a diligent investigation, there is a suspicion that the child may have been baptized, a suspicion or doubt that is not confirmed but is grounded, baptism must be administered *sub condicione*. However, that would not be necessary either, since c. 869 § 1 already considers that situation. In conclusion, c. 870 touches upon what has already been regulated in the previous canons, applying it to a specific situation.

871 **Fetus abortivi, si vivant, quatenus fieri potest, baptizentur.**

Aborted fetuses, if they are alive, are to be baptized, in so far as this is possible.

SOURCES: cc. 746, 747

CROSS REFERENCES: cc. 849, 850, 864,869 § 1

COMMENTARY

María Blanco

"The life of any human being has to be respected absolutely from the very moment of conception because man is the only creature on earth that God 'has loved for itself' (*GS* 24), and the soul of each man is 'created immediately' by God." The Instruction *Donum Vitae* of the CDF[1] expresses itself in this way, and the canon under discussion follows the same lines. In fact, this same doctrine is the grounds for the practice of procuring baptism for aborted fetuses, which was also regulated by the *CIC*/1917.

Overall, the *CIC* has simplified considerably all the casuistry related to the baptism of aborted fetuses that the *CIC*/1917 regulated in cc. 746 and 747. For this reason, it is interesting to point out some of the general directives, deduced from all the juridical regulations of baptism, which guide the conduct in each case.

In the first place, the *CIC* does not distinguish between provoked abortions and spontaneous abortions.

Second, the conditional clause *si vivant* may be interpreted in the sense that, as long as there is no certainty of death, *baptizentur.* Comparing the provisions of c. 747 in the *CIC*/1917 and the wording in c. 871, it is easy to understand that the legislator does not distinguish in this general norm between absolute baptism and conditional baptism. In any case, if an aborted fetus lives, it must be baptized. Were there any doubt, it could be said: "if you are alive ...," thus preserving the correct intention of the minister and not exposing the sacrament to invalidity. In fact, what is known as baptism *sub condicione* does not affect the liturgical form (ablution plus trinitarian formula), but rather the intention of the minister,

1. CDF, Instr. *Donum Vitae*, February 22,1987, I, 4. The document itself, at the end of the text, refers to: PIUS XII, Enc. *Humani Generis*, in *AAS* 42 (1950), p. 575; PAUL VI, *Professio fidei*, in *AAS* 60 (1968), p. 436.

which explains why the liturgical books do not contain any reference to such a baptism.

Furthermore, it is clear that the *CIC* does not intend *a priori* to establish a detailed regulation of aspects and concrete circumstances, which must be evaluated by the minister of baptism. Certainly, the minister will act according to moral principles related to the administration of baptism and the future pastoral guidelines that could be issued in relation to new situations or greater difficulty in response to the request entrusted to the pastors by c. 861 § 2 (think, for example, about embryos resulting from artificial insemination and *in vitro* fertilization, situations mentioned by the Instruction *Donum Vitae*, I,6).

Finally, from the literal meaning of the expressions used, it may be deduced that the legislator has implicitly established a protection to avoid any abuses that could arise; only a living human being (*homo*) may be baptized. That is, if one relates the provisions of c. 864 to the contents of c. 871, it is obvious that if both conditions are not present (being *homo*, and also, *vivus*), the baptism would be invalid.

CAPUT IV
De patrinis

CHAPTER IV
Sponsors

872 **Baptizando, quantum fieri potest, detur patrinus, cuius est baptizando adulto in initiatione christiana adstare, et baptizandum infantem una cum parentibus ad baptismum praesentare itemque operam dare ut baptizatus vitam christianam baptismo congruam ducat obligationesque eidem inhaerentes fideliter adimpleat.**

In so far as possible, a person being baptised is to be assigned a sponsor. In the case of an adult baptism, the sponsor's role is to assist the person in christian initiation. In the case of an infant baptism, the role is together with the parents to present the child for baptism, and to help it to live a christian life befitting the baptised and faithfully to fulfil the duties inherent in baptism.

SOURCES: c. 762; SCDS Instr. *Ex responsionibus datis*, 25 nov. 1925 (*AAS* 18 [1926] 44-47); OBP *Prae* gen., 8; RCIA 42, 43, 135–137, 236

873 **Patrinus unus tantum vel matrina una vel etiam unus et una assumantur.**

One sponsor, male or female, is sufficient; but there may be two, one of each sex.

SOURCES: c. 764; OBP *Prae* 6

874 **§ 1. Ut quis ad munus patrini suscipiendum admittatur, oportet: (1) ab ipso baptizando eiusve parentibus aut ab eo qui eorum locum tenet aut, his deficientibus, a parocho vel ministro sit designatus atque aptitudinem et intentionem habeat hoc munus gerendi; (2) decimum sextum aetatis annum expleverit, nisi alia aetas ab Episcopo dioecesano statuta fuerit vel exceptio iusta de causa parocho aut ministro admittenda videatur; (3) sit catholicus, confirmatus et sanctissimum Eucharistiae sacramentum iam receperit, idemque vitam ducat fidei et muneri suscipiendo congruam; (4) nulla poena canonica legitime irrogata vel declarata sit innodatus; (5) non sit pater aut mater baptizandi.**

§ 2. Baptizatus ad communitatem ecclesialem non catholicam pertinens, nonnisi una cum patrino catholico, et quidem ut testis tantum baptismi, admittatur.

§ 1. To be admitted to undertake the office of sponsor, a person must:
- 1° be appointed by the candidate for baptism, or by the parents or whoever stands in their place, or failing these, by the parish priest or the minister; to be appointed the person must be suitable for this role and have the intention of fulfilling it;
- 2° be not less than sixteen years of age, unless a different age has been stipulated by the diocesan Bishop, or unless the parish priest or the minister considers that there is a just reason for an exception to be made;
- 3° be a catholic who has been confirmed and has received the blessed Eucharist, and who lives a life of faith which befits the role to be undertaken;
- 4° not labour under a canonical penalty, whether imposed or declared;
- 5° not be either the father or the mother of the person to be baptised.

§ 2. A baptised person who belongs to a non-catholic ecclesial community may be admitted only in company with a catholic sponsor, and then simply as a witness to the baptism.

SOURCES: § 1: c. 765; OBP *Prae* gen., 10; RCIA 43
§ 2: DE/1967 I: 48, 57; OBP *Prae* gen., 10, 3

CROSS REFERENCES: cc. 877, 892, 893, 895

COMMENTARY

María Blanco

1. The institution of the sponsor probably came into being for practical reasons, since at the beginning of the Church, if a pagan or a Hebrew wanted to convert, he or she was presented to the presbyters by a known Christian, who gave witness to the person's good disposition. In times of persecution, this was even more necessary because of fear of bringing traitors into the community of the faithful. This Christian was the *adductor*, the *fidedictor*, as is expressly stated in the sources, including the *Traditio apostolica* (cf. 1, 16), the *Apostolic Constitutions* (cf. 8, 32, 2) and the *Peregrinatio Aeteriae.*[1] However, it was not enough to attest to the honesty of the persons presented; they also had to be helped during the catechumenate period, especially close to baptism, during Lent and Holy Week, and in the numerous preparatory rites and diverse baptismal ceremonies.

The *Apostolic Constitutions* (cf. 3, 16; 8, 32) also states that the assistance given to the neophyte was provided to men by the deacon and to women by the widows (deaconesses). Later, other persons began participating.

In any case, all these offices proved necessary for the baptism of children, and the sponsors were always responsible for the Christian education of their spiritual children.[2]

The concept of spiritual paternity was developed by Saint Augustine, who linked it with the doctrine of original sin, so that the mission of the sponsor would be something like a new spiritual generation that does not transmit sin because it proceeds from spiritual love: "The concept of paternity (spiritual filiation) had its origin in the duty to instruct; *magister* was equal to *pater.*"[3] These relationships of paternity and filiation created problems regarding marriage: "A subsequent carnal relationship, even if blessed by the Church, would stain the purity of that affection. This results in the diriment impediment of a spiritual relationship."[4] This impediment was regulated up to the *CIC*/1917, but it was abolished in the current Code.

2. The *CIC* first regulates the proper function of the sponsors and, then, it refers to the requirements that must be met by those who will fulfill that function.

1. Cf. P.H. OPENHEIM, *Ius liturgiae baptismalis* (Turin 1943), p. 116.
2. Cf. A. LANZA-P. PALAZZINI, *Principios de Teología moral* (Madrid 1958), note 40, pp. 65–66.
3. Ibid., note 41.
4. Ibid., p. 66.

a) Let us examine, then, what that *function* properly consists of in light of the provisions of c. 872. The legislator has distinguished in this case between the baptism of adults and the baptism of children. In the case of adults, the sponsors assist in the Christian initiation of the person being baptized: "this sponsor will have helped at least in the latter phase of the preparation for the sacrament and, after the baptism, will contribute to the person's perseverance in the faith and in the Christian life."[5] In the case of a child, the sponsors must present him, together with the parents and, in addition, "try to ensure that the child being baptized lives a life that is consistent with the baptism and faithfully fulfills the duties inherent to it." This sponsor "represents the family, and, if necessary, helps the parents so that the child eventually professes the faith and expresses it in his life."[6]

b) Canon 874, on the other hand, enumerates the *requirements* to be admitted as a sponsor.

The requirements demanded by the legislator are the following:

— *Choice of a person with the capacity for this mission and intention to fulfill it.* Although c. 211 says that the basic right and duty of "all the faithful" is "to work so that the divine message of salvation may increasingly reach the men of all times throughout the world," here this general apostolic mission concentrates specifically on the sponsors' obligatory functions, despite the fact that they are secondary to the parents' function.[7]

Selection of the sponsors is incumbent upon the person being baptized, the parents, or whoever stands in their place and, as a last resort, upon the parish priest or the minister.

— *Sixteen years of age.* While this canon establishes two exceptions, the first of them refers to private law: "unless the diocesan bishop establishes otherwise." In other words, the legislator is contemplating the possibility that the bishop may establish an older or younger age, taking into account the specific circumstances of the diocese, to be able to fulfill the mission of sponsor.

The second reason is discretional: the determination of whether, in this specific case, there is a proportional cause that justifies such an exception is left to the judgment of the parish priest or the minister.

— *To have received the three sacraments of Christian initiation and lead a life congruent with the faith and the mission that they are about to fulfill.* This is intimately related to the provisions set forth in § 1,1° of the same canon.

5. *Praenotanda generalia*, 8.
6. Ibid.
7. Cf. G. DAMMACO, "Missione dei genitori e munus dei padrini," in *Monitor Ecclesiasticus* 115 (1990), p. 640.

—*Not to be under any canonical penalty.*

—*Not to be the mother or father of the baptized.* Obviously, it would make no sense due to the secondary nature of the sponsors' mission itself in relation to the mission of the parents.

All that has been said up to now lends special strength to the provision included in c. 874 § 2. Consequently, it is understandable that, given the importance granted by the legislator to the distinctive mission of the sponsors, a member of a separate ecclesial community may only be admitted as a *witness to the baptism* and not as a sponsor. Furthermore, in the case where a witness from a separate ecclesial community is present, he or she will be admitted together with a Catholic sponsor.

CAPUT V
De collati baptismi probatione et adnotatione

CHAPTER V
Proof and Registration of Baptism

875 **Qui baptismum administrat curet ut, nisi adsit patrinus, habeatur saltem testis quo collatio baptismi probari possit.**

Whoever administers baptism is to take care that if there is not a sponsor present, there is at least one witness who can prove that the baptism was conferred.

SOURCES: c. 779

CROSS REFERENCES: cc. 849, 872, 873, 874

COMMENTARY
María Blanco

This canon opens the chapter addressed to "proof and registration of the Baptism administered" (cc. 875–878). The juridical situation derived from the reception of this sacrament demands that necessary safeguards be applied to protect not only the public good of the Church, but also the rights of the faithful that flow from it.[1]

This canon turns out to be a novelty, in comparison with the previous code regulation. The legislator ensures the proof in situations where the sponsor is absent from the celebration. The literal meaning of c. 872 must not be forgotten: "quantum fieri potest." In other words, the presence of the sponsors is only a prudent measure of convenience, which in no way affects the substance of the sacrament. In the specific case where

1. Cf. E. TEJERO, commentary on cc. 875–878, in *Pamplona Com.*

the celebration takes place in the absence of a sponsor, the presence of a witness who may confirm the celebration of the sacrament is established as a precaution. If, the intention is only to obtain a *guarantee of the proof*, then this is not a requirement for the licit administration of the sacrament, since the legislator uses the expression "curet," meaning that if it is impossible for the witness to be present, there is no reason for the minister not to perform the baptism. Consider, for example, a case where there is danger of death and no possibility of informing a third person, or the case of a minister, Catholic or not, who is unaware of the existence of this legal precaution. All of this is understood without in any way underestimating the legal "demands" for a sponsor and witnesses, something which would not be consistent with the *mens legislatoris*.

It is clear, that proof that baptism has been conferred is an eminently practical matter, because doubts frequently arise as to its celebration and, given that baptism is a *ianua sacramentorum* (cf. c. 849), it is necessary at times to show a certificate that it was conferred.

876 Ad collatum baptismum comprobandum, si nemini fiat praeiudicium, sufficit declaratio unius testis omni exceptione maioris, aut ipsius baptizati iusiurandum, si ipse in aetate adulta baptismum receperit.

To prove that baptism has been conferred, if there is no conflict of interest, it is sufficient to have either one unexceptionable witness or, if the baptism was conferred upon an adult, the sworn testimony of the baptised person.

SOURCES: c. 779

CROSS REFERENCES: cc. 869 § 1, 870, 875

COMMENTARY

María Blanco

In situations where the celebration of a baptism cannot be proven from the baptismal certificate, the legislator provides for the admission of other proofs, namely, testimonial proof. This canon is a practical application of such a type of proof.

The legislator uses the expression "si nemini fiat praeiudicium." Obviously, "the fact that someone receives baptism does not harm anyone; but the condition of having been baptized may be a reason for others not to enjoy certain advantages they would have a right to, had the person not been baptized. For example, if one of the spouses were to request the annulment of the contracted marriage on the grounds of not being baptized (impediment of disparity of cult), it could be detrimental to the other spouse ...; being baptized and having suitable proof of it could also be detrimental to someone, because then the Pauline privilege would not be applicable."[1]

What the canon under discussion does is to protect, in the extent that the law makes it possible, the *res veritatis*. To do so, it facilitates using different means of proof. In this specific case, with the exception previously mentioned, the following are admitted:

1. A. ALONSO LOBO, *Comentarios al Código de Derecho Canónico* II (Madrid 1963), pp. 154–155.

— the declaration of a sole witness, with two conditions: one objective (that no harm be brought to anyone) and the other subjective (that it be a witness above all suspicion). If one of these two circumstances is missing, this probative means is invalid.

— the sworn testimony of the person baptized; the only requirement in this case is that baptism must have been conferred upon an adult.

877 § 1. **Parochus loci, in quo baptismus celebratur, debet nomina baptizatorum, mentione facta de ministro, parentibus, patrinis necnon, si adsint, testibus, de loco ac die collati baptismi, in baptizatorum libro sedulo et sine ulla mora referre, simul indicatis die et loco nativitatis.**

§ 2. **Si de filio agatur e matre non nupta nato, matris nomen inserendum est, si publice de eius maternitate constet aut ipsa sponte sua, Codex plerumque non definit ritus, qui in actionibus liturgicis inscribendum est, si eius paternitas probatur aliquo publico documento aut ipsius declaratione coram parocho et duobus testibus facta; in ceteris casibus, inscribatur baptizatus, nulla facta de patris aut parentum nomine indicatione.**

§ 3. **Si de filio adoptivo agitur, inscribantur nomina adoptantium necnon, saltem si ita fiat in actu civili regionis, parentum naturalium ad normam §§ 1 et 2, attentis Episcoporum conferentiae praescriptis.**

§ 1. The parish priest of the place in which the baptism was conferred must carefully and without delay record in the register of baptism the names of the baptised, the minister, the parents, the sponsors and, if there were such, the witnesses, and the place and date of baptism. He must also enter the date and place of birth.

§ 2. In the case of a child of an unmarried mother, the mother's name is to be entered if her maternity is publicly known or if, either in writing or before two witnesses, she freely asks that this be done. Similarly, the name of the father is to be entered, if his paternity is established either by some public document or by his own declaration in the presence of the parish priest and two witnesses. In all other cases, the name of the baptised person is to be registered, without any indication of the name of the father or of the parents.

§ 3. In the case of an adopted child, the names of the adopting parents are to be registered and, at least if this is done in the local civil registration, the names of the natural parents in accordance with §§ 1 and 2, subject however to the rulings of the Bishops' Conference.

SOURCES: § 1: c. 777 § 1; SCCouncil Resp., 31 ian. 1927; SCDS Normae, 2 oct. 1941; OBP *Prae* gen., 29
§ 2: c. 777 § 2; CodCom Resp., 14 iul. 1922 (*AAS* 14 [1922] 528)

878 **Si baptismus neque a parocho neque eo praesente administratus fuerit, minister baptismi, quicumque est, de collato baptismo certiorem facere debet parochum paroeciae in qua baptismus administratus est, ut baptismum adnotet ad normam can. 877 § 1.**

If the baptism was administered neither by the parish priest nor in his presence, the minister of baptism, whoever that was, must notify the parish priest of the parish in which the baptism was administered, so that he may register the baptism in accordance with can. 877 § 1.

SOURCES: c. 778; SCCouncil Resp., 31 ian. 1927

CROSS REFERENCES: cc. 535 § 2, 857 § 2, 1137, 1138, 1139, 1140

COMMENTARY

María Blanco

1. These canons regulate the registration of baptism. It is important to emphasize that until 1870 in Spain, the ecclesiastical registries functioned as civil registries: "The guarantees offered from the beginning by the ecclesiastical registry were such that its use in the civil courts became practically indispensable. Thus, during three centuries, a purely ecclesiastical institution was able to meet the needs of legal existence, regarding the proof of some of the most important legal status data, as effectively as civil registries have later, and, of course, without any complication or expense on the part of the state."

Even in areas under the influence of the Protestant reform, the churches, continued Perè Raluy, "copied the registration system of the Catholic Church and even today, in some states, its registries constitute the normal means of announcing baptisms, marriages and deaths."[1]

Along these lines, it is interesting to find a judicial decision from Spain's Supreme Court at the beginning of the century in which the claimant, born on February 1, 1869, *as demonstrated by a certificate of baptism*, proves that, on June 22, 1891 he was 22 years, 4 months and 22 days old. In other words, that since he was not 23 years old yet (after publication of the Civil Code of 1889), he was a minor.

1. J. PERÈ RALUY, *Derecho del Registro Civil* I (Madrid 1962), p. 33.

2. Returning to the present canonical regulations, the legal text (c. 877 § 1) is clear when it applies the expressions *diligently and without delay* to the registration. Similarly, it is quite clear when it enumerates the requirements that must be entered in the registry: name of the baptized, name of the minister, name of the parents, name of the sponsors and witnesses if used, place and day of birth, and place and day in which the baptism was celebrated.

3. Besides these prescriptions, the diocesan provisions tend to add some other requirements, which Mostaza specifies as follows:

— *Place of Baptism*: indicating in this case the city or town, the church with its title, the diocese, and sometimes the civil province (to avoid eventual conflicts when several towns have the same name).

— *Date of baptism*: day, month, and year.

— *Name of the minister*: stating whether he is a deacon or a presbyter; if he had permission from the parish priest to baptize.

— *Name of the baptized*: the Ritual of Christian Initiation of Adults admits the imposition of a name according to the civil custom of the region as long as it may assume a Christian sense (RCIA, 203. See commentary on c. 855). The *CIC*, although encouraging the imposition of a Christian name, does not establish different provisions in cases where the name is alien to the Christian viewpoint, although for years the practice has been to add the name of a saint, entering the previous name in parentheses.

— *Date of birth*: if this fact is unknown, the approximate age may be entered.

— *Data relevant to filiation*: name of the parents, domicile.

— *Sponsors and witnesses*: if any, their name and address will be entered.

— *Baptism "sub condicione"*: if so, it must be acknowledged; also, if it was reiterated *sub condicione* because of doubts regarding the first baptism.

— *Signature of the parish priest*: it is the custom for the minister who administered the baptism to sign.

— *Parish seal.*[2]

4. The duty to register the baptism is the responsibility of the parish priest of the place where it is celebrated (c. 877 § 1), in contrast to the *CIC*/1917 established in c. 777 § 1: "Parish priests must carefully and without delay record in the register of baptism the names of the baptized, the minister, the parents, the sponsors and the place and date of baptism." For

2. J. MANZANARES, *Nuevo Derecho parroquial* (Madrid 1988), pp. 148–149.

this reason, c. 878 of the *CIC* refers to c. 877 § 1, to ensure the registration when the minister is not the parish priest.

In short, according to the new normative provisions, the following must be taken into account:

a) the place where the registration must be made is in the parish where the baptism is performed, not the parish to which the person baptized would eventually belong because of his domicile (cf.. 877 § 1);

b) the person responsible for entering the information in the registry is the parish priest of the place where the baptism is celebrated (c. 877 § 1);

c) if the parish priest of the place is not the person performing the baptism, then the minister, must report the celebration of the sacrament so that the necessary registration may be made (cf. c. 878).

It is clear, therefore, that it is no longer necessary for the minister to report the celebration of the sacrament to the parish priest of the person being baptized (*ratione domicilii*) as was prescribed by c. 778 of the *CIC*/1917: "With this repeal, any inconvenience arising from the duplicate registration of the baptism regarding possible marginal entries to be made on the certificate of baptism according to c. 535 § 2 (confirmation, marriage, adoption, sacred orders, perpetual profession in a religious institution, change of rite, etc.)."[3] In other words, the disadvantages of the double registration are no longer possible.

5. Furthermore, the *CIC* establishes that, in the case of a *child of an unmarried mother*, the registration must be done as follows (c. 877 § 2):

a) registration of the name of the woman: if it is publicly known or if she voluntarily requests it (in writing or before two witnesses);

b) registration of the name of the father: if paternity is proven by a public document or by the father's own declaration before the parish priest and two witnesses;

c) registration only of the name of the person baptized: in cases that do not include the situations above.

In comparison with the *CIC*/1917, the new Code has greatly simplified this matter, taking into account that a distinction is no longer made between legitimate and illegitimate children as to the juridical effects; distinction is only made regarding their characterization (see commentaries to cc. 1137–1140).

6. In the case of an *adopted child*, registration must include (c. 877 § 3):

a) the name of the adopting parents;

3. Ibid., p. 148.

b) the name of the natural parents: when it is thus entered in the civil registry of the region, taking into account the provisions of the bishops' conference in this matter.

The Spanish Bishops' Conference[4] has established the following in art. 9 of the General Decree on complementary norms to the Code of Canon Law: "In observance of the provisions of c. 877 § 3, parish priests must be careful that the registration of an adoptive child in the Book of the Baptized, include the name or names of the adopting parents, and other data contained in the registration of adoption entered in the Civil Registry, for which purpose the parish priest shall demand, before recording the information in the Book of the Baptized, the relevant Civil Registry document that legitimately certifies the adoption made."

4. For English Speaking Conference of Bishop see Vol. V, Appendix III.

TITULUS II
De sacramento Confirmationis

TITLE II
The Sacrament of Confirmation

INTRODUCTION

Eloy Tejero

1. *Organization of this title*

In the current code, this title maintains the same name and number as it did in the *CIC*/1917. This effort to establish continuity with the previous code was stated expressly by the legislative commission: "In the proposed *schema*, the Code's development order is maintained for confirmation also."[1] However, changes were introduced in the chapter headings. For example, in the *CIC*/1917, discussion of confirmation started with cc. 780–781, related to the essential elements of the sacramental sign, but these canons were not a chapter in themselves, nor did a specific heading precede them. The *CIC* organizes this material into chap. I, "The Celebration of Confirmation." Nevertheless, the introduction of this chapter does not affect the total number of chapters, because chap. III of the *CIC*/1917, "Time and Place to Confer Confirmation," is omitted in the *CIC*. Another minor change is reflected in the wording of the heading "Subject of the Confirmation," now stated as "The Persons to Be Confirmed." In all these changes, the legislator has maintained the parallel between this title's chapter headings and those of the previous title, related to baptism. Thus, one find a systematization that coherently articulates the canonical treatment of this subject matter, the development of which seeks to establish the elements of the rite necessary for the validity of the sacrament (chap. I); the services required from the minister (chap. II); the determinations regarding the capacity and legitimization of the subject, which mark his right to be confirmed (chap. III); the provisions about the sponsors (chap. IV) and the norms related to the proof and registration of confirmation (chap. V).

1. *Comm.* 3 (1971), p. 203.

2. *Substantive contents*

Regarding the substantive contents of this title, doctrine has revealed[2] the existence of a plurality of values that are not always easily harmonized. The correct understanding of these values requires a consideration of the intense normative dynamics that, since Vatican II, have influenced the discipline regarding the sacrament of confirmation. These dynamics inevitably bear upon the provisions set forth in this title and reflect on the determinations established by norms of particular scope that, on points such as the minister of confirmation and the age to receive the sacrament, highlight the difficulty of a unitary disciplinary treatment.

With the spread of Christianity outside the cities and the generalization of the baptism of children, the separation of the administration of baptism and confirmation implemented in the Latin Church in the fourth century gave rise to disciplinary differences between the Eastern and Western churches that have manifested themselves in ecclesiastic and liturgical law. Furthermore, the justification of the Latin practice occasionally has veered into theological formulations of a distinctive character in relation to those set forth by Eastern theology.[3]

With these precedents, the Vatican Council II "confirms and approves the ancient discipline concerning the sacraments which exist in the Eastern Churches, and also the ritual observed in their celebration and administration, and wishes this to be restored where such a case arises" (*OE* 12). It promotes a treatment of the discipline regarding confirmation that, turning away from the criteria set forth by the Council of Trent,[4] welcomes with a broad ecumenical spirit the values of the practice of the Eastern Churches: "The established practice with regard to the minister of Confirmation, which has existed among eastern Christians from ancient times, is to be fully restored. Accordingly, priests are able to confer this sacrament, using chrism blessed by their patriarch or bishop" (*OE* 13).

2. T. RINCÓN-PÉREZ, "Disciplina del culto divino," in *Manual de derecho canónico*, 2nd ed. (Pamplona 1991), pp. 459ff; E. CAPPELLINI, "Il Conferimento della confermazione in ordine alle esigenze teologiche e canoniche," in *Monitor Ecclesiasticus* 115 (1990), pp. 123–127; c. VAN DE WIEL, "The Sacraments in the Code of Canon Law. Introductory Norms, Baptism, and Confirmation," in *Ephemerides Theologiae Lovaniensis* 66 (1990), pp. 174–177; MP AGOSTINO, "I sacramenti dell'iniziazione cristiana," in *Il Codice del Vaticano II. I sacramenti della Chiesa* (Bologna 1989), pp. 52–53; D. SALACHAS, *L'iniziazione cristiana nei Codici orientale e latino* (Bologna-Rome 1991), pp. 104–107; M. MORGANTE, *I sacramenti nel Codice de Diritto canonico* (Cinisello Balsamo 1986). For a more extensive bibliography, see, in this volume, my introduction to Liber IV: *De la función de santificar de la Iglesia*, note 1.

3. L. LEIJSSEN, "La confirmation. Origines, histoire et situation pastoral aujourd'hui," in *Questions Liturgiques* 70 (1989), pp. 1–126; N JUNG, "Confirmation dans l'Église occidentale," in *Dictionnaire de Droit canonique*, vol. IV (1949), pp. 75–109; R. FALSINI, "Confirmazione," in *Nuovo Dizionario de Liturgia* (Rome 1984), pp. 269–294.

4. *Sess.* VII, *de Sacr. Confirmationis*, c. 3. Cf. A. MOSTAZA, *El ministro extraordinario de la Confirmación* (Salamanca 1952), pp. 132–135.

As Baudry[5] has pointed out, several of the initial proposals by the bishops related to the discipline of confirmation during the preliminary period of preparation for the Council focused on the extraordinary minister of the sacrament. Later, both the Council Commission discussing the doctrine of the sacraments and the Commission on the Eastern churches emphasized not only the advisability for the Latin Church to broaden the authority granted to presbyters as extraordinary confirmation ministers,[6] but also the necessity of considering the breadth of tradition on this point, respecting the Eastern practice.[7] The presentation by Melkite Patriarch Maximus IV on this subject (see commentary on cc. 882–884 for a more detailed discussion), stood out because of the attention it commanded from members of the Council's Central Commission.[8]

The differences between Eastern and Latin practice are not limited to the minister of confirmation. Since the Eastern Churches ordinarily confer this sacrament at the same time as baptism, it is usual to administer this sacrament to infants. This tendency does not agree with the provision set forth by the Council of Cologne in 1280 which, establishing seven as the age for receiving confirmation, changed the general tendency that favored moving the celebration of this sacrament before the age of discretion. This generated a difference between the French practice, which delayed the reception of confirmation until after first communion, and that of Spain, Portugal, Latin America and the Philippines, which continued the ancient custom of confirming children prior to the age of discretion.[9]

Although determining that *the sacrament of confirmation should be administered to the faithful around the age of discretion,* the current Code (see commentary on c. 891), in referring to the bishops' conferences the determination of *another age,* has facilitated the delay in the reception of this sacrament allowed in the provisions set forth by the bishops' conferences.[10] The implied dynamics diverge from the Eastern discipline, so esteemed on other disciplinary points related to this sacrament.

If in discussing the minister and the subject of confirmation the canons in this title reflect tendencies as significant as these, other important clarifications have been made regarding the essential rite of this

5. G.H. BAUDRY, "La réforme de la confirmation de Vatican II a Paul VI," in *Mélanges de science religieuse* 45 (1988), p. 84; Cf. J. ZERNDL, *Die Theologie der Firmung in der Vorbereitung und in den Akten des Zweiten Vatikanischen Koncils* (Paderborn 1986).

6. G.H. BAUDRY, "La réforme...," cit, pp. 85–86.

7. Ibid., pp. 86–89.

8. Ibid., p. 86.

9. A. MOSTAZA, "La edad de los confirmandos," in *Anthologica annua* 4, (1956) pp. 341–384; D. TETTAMANZI, "L'età della cresima nella disciplina della Chiesa latina," in *Scuola cattolica* 195 (1967), pp. 34–61; I. BIFFI, "L'età della confirmazione e i suoi problemi," in *Ambrosius* (1967), pp. 54–83.

10. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al CIC* (Milan 1990), *passim.*

sacrament, which must be taken into account to correctly interpret cc. 880 and 881. In fact, Paul VI,[11] after pointing out that, throughout the centuries, the sacrament's rites have undergone changes in the East as well as in the West(which highlights the considerable power of the Church to adapt the sacraments) determines that the essential rite of confirmation is anointing with chrism, not the imposition of hands. Furthermore, abandoning the formula used in the Latin Church until then, Paul VI orders the use in the West of the ancient formula of the Byzantine rite, which highlights the value of the *seal of the gift of the Holy Spirit.* With these provisions, the Holy See fulfilled the directives of Vatican II: "The rite of confirmation is to be revised also so that the intimate connection of this sacrament with the whole of the Christian initiation may more clearly appear." (*SC* 71)

These changes in the discipline of confirmation, although quite important, are not what one finds repeated most in the Vatican II texts; it is the specific ecclesial position of the confirmed that are stressed with greatest insistence:[12] "By the sacrament of Confirmation they are more perfectly bound to the Church and are endowed with the special strength of the Holy Spirit. Hence they are, as true witnesses of Christ, more strictly obliged to spread the faith by word and deed" (*LG* 11). In addition to this text, the direct source of c. 879, others stress that the confirmed "have ..., as living members, the vocation of applying to the building up of the Church ... . The apostolate of the laity is a sharing in the salvific mission of the Church" (*LG* 33). "Inserted as they are in the Mystical Body of Christ by Baptism and strengthened by the power of the Holy Spirit in confirmation, it is by the Lord himself that they are assigned to the apostolate" (*AA* 3). The profound influence of this divine vocation of the confirmed in the building up of the universal Church is thus stated in *Ad gentes* 11: "All Christians by the example of their lives and the witness of the word, wherever they live, have an obligation to manifest the new man which they put on in Baptism, and to reveal the power of the Holy Spirit by whom they were strengthened at confirmation, so that others, seeing their good works, might glorify the Father (cf. Mt 5:16) and more perfectly perceive the true meaning of human life and the universal solidarity of mankind." This doctrine has been a basic determining factor, not only of the provisions set forth in c. 879, but also in the formalization of the duty and the right of all the faithful to the apostolate (c. 211), specifically the laity, in cc. 224–226.

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11. Ap. Const. *Divinae consortium naturae*, August 15, 1971, in *AAS* 63 (1971), pp. 657–664.
12. *LG* 11; *LG* 33; *AA* 3; *AG* 11; *AG* 36.

879 **Sacramentum confirmationis, quod characterem imprimit et quo baptizati, iter initiationis christianae prosequentes, Spiritus Sancti dono ditantur atque perfectius Ecclesiae vinculantur, eosdem roborat arctiusque obligat ut verbo et opere testes sint Christi fidemque diffundant et defendant.**

The sacrament of confirmation confers a character. By it, the baptized continue their path of Christian initiation. They are enriched with the gift of the Holy Spirit, and are more closely linked to the Church. They are made strong and more firmly obliged by word and deed to witness to Christ and to spread and defend the faith.

SOURCES: *Rituale Romanum*, 1952, tit. III, ch. I; *LG* 11; *AG* 36; *PO* 5; PAULUS Pp. VI, Ap. Const. *Divinae consortium naturae*, 15 aug. 1971 (*AAS* 63 [1971] 660); RConf 1, 2; OBP *Prae* gen., 2

CROSS REFERENCES: 205, 211, 224-226, 375, 573, 605, 747 § 1, 842 § 1, 845 § 1, 849, 866, 879, 881, 889 § 2, 891, 897, 913, 959, 998, 1008-1009, 1015 § 3, 1033, 1055-1062, 1065 § 1

COMMENTARY

Eloy Tejero

Among the observations made by the *Coetus de sacramentis* in November 1971 relating to the first *Schema canonum* was that the projected *schema*, as well as the *CIC*/1917, lacked a canon setting forth the meaning of the sacrament of confirmation and its importance in Christian life. In addition, it was observed that c. 68 of the projected *schema* of the *LEF* included text to fill this legal gap, which, were the *LEF* not promulgated, deserved to be included in the provisions of the *CIC* regarding confirmation.[1] The wisdom of this observation not only resulted in this initial canon of the title *The Sacrament of Confirmation*, but also demonstrated the advantages of placing canons at the beginning of each title related to the sacraments (cc. 849, 879, 897, 959, 998, 1008–1009, 1055–1062) which state the influence each sacrament has on the external and visible

1. *Comm.* 3 (1971), p. 203.

conformation of the body of the Church, according to the teachings set forth in *Lumen gentium* 11 and, more succinctly, in c. 205.

1. *Sacramental Character of Confirmation*

In this description of the ecclesial situation flowing from the sacrament of confirmation, the canonical relevance of which has been emphasized by doctrine,[2] one finds the first reference to the fact that the confirmation confers a character. This is a basic fact, as witnessed to by cc. 845 § 1, 1008 and 1015 § 3, which cannot be ignored by the canonical system. While the sacramental character is mentioned in *Lumen gentium* 11 in explaining the ecclesial dimension of baptism, it is not repeated again in that text (direct source of the canon under discussion) when, immediately after, the meaning of confirmation in the structuring of the Church is explained. As a result, the reference to the character conferred by confirmation cited by the canon under discussion, while not expressly a part of *Lumen gentium* 11 regarding confirmation, is consistent with the contents of that text.

In close relationship to the proper contents of the character, *Lumen gentium* 11 uses a concept long in doctrinal tradition, clearly defined by Saint Thomas,[3] and having a profound juridical significance: *deputatio*. The Angelic Doctor accompanies this concept with those of *potentia spiritualis* or *potestas spiritualis*[4] *that, in relation to the confirmed, have a specific connotation: confirmatus accipit potestatem publice fidem Chisti verbis profiteri quasi ex officio.*[5] But, before taking into consideration the terms in which c. 879 sets forth the contents of this office, we must point out the significant dimension inherent in the sacramental character itself.

2. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho canónico*, 2nd ed. (Pamplona 1991), pp. 467–471; E. CAPPELLINI, "Il conferimento della confermazione in ordine alle esigenze teologiche e canoniche," in *Monitor ecclesiasticus* 115 (1990), pp. 123–142; MP AGOSTINO, "I sacramenti dell'iniziazione cristiana," in *Il Codice del Vaticano II. I sacramenti della Chiesa* (Bologna 1989), pp. 54–57; D. Salachas, L'iniziazione cristiana nei Codici orientale e latino (Bologna 1992), pp. 103–107. For a more extensive bibliography, see Introduction to Liber IV: De la función de santificar de la Iglesia, note 1.

3. S. Th., III, q. 42, a. 1 ad 3; q. 63, a. 1, ad 1; q. 63, a. 2. Cf. J. Galot, La nature du caractère sacramentel. Étude de théologie médiévale (Paris-Louvain 1958); E. Doronzo, "Originis et evolutionis doctrinae de 're et sacramento' brevis delineatio," in Revue de l'Université d'Ottawa. Section Spécial 3 (1934), pp. 213–228; idem, "Doctrina de 're et sacramento' in genere," ibid. 4 (1935), pp. 238–260; idem, "De charactere ut est 'res et sacramentum,'" ibid. 5 (1936), pp. 243–261; idem, De 're et sacramento' in sacramentis non characteristicis, ibid. 6 (1937), pp. 181–193; E. Tejero, "La 'res et sacramentum' estructura y espíritu del ordenamiento canónico. Síntesis doctrinal de Santo Tomás," in Sacramentalidad de la Iglesia y sacramentos (Pamplona 1983), pp. 427–460.

4. *S. Th.*, III, q. 63, arts. 2 and 5; ibid., q. 72, a. 9; *Suppl.* q. 34, a. 2 ad 2.

5. *S. Th.*, III, q. 72, a. 2 ad 5.

Along these lines, in relation to the sacramental rite of confirmation, some authors have not succeeded in differentiating the baptismal anointing from the anointing of confirmation.[6] However, it must be taken into account that the significant nature of the character of this sacrament has been taught, although in different ways, by the Eastern tradition, which sees the confirmed as *marked with the seal of the gift of the Holy Spirit* (cf. c. 692 *CCEO*), as well as by the Latin tradition. The Latin tradition contemplates the sacramental character of confirmation as a conformation with Christ, *plenus gratia et veritate,*[7] *according to the general doctrine on the sacramental character, which is the "character Christi, cuius sacerdotio configurantur fideles secundum sacramentales characteres, qui nihil aliud sunt quam quaedam participationes sacerdotii Christi, ab ipso Christo derivatae."*[8]

The reference made by this canon to the character conferred by confirmation is a basic factor in the determination of its specific sacramental nature, which was confirmed by the Council of Trent when it condemned whoever "said that the confirmation of the baptized is an idle ceremony and not a true and proper sacrament, or that in antiquity it was nothing more than a certain catechesis intended to explain to adolescents the reason for their faith."[9] Certain pastoral attitudes seem to be very close to these statements. As the Spanish Bishops' Conference has observed, they "seem to consider as the most essential element of this sacrament the personal and free ratification that the candidates make of their baptism, upon accepting as theirs the faith and the baptismal obligations that in their infancy others professed in their stead. In this context, the free acceptance of the faith, publicly expressed in confirmation, would make up for the lack of freedom with which baptism was received by those who were baptized before reaching the age of reason."[10]

2. *Confirmation and Christian Initiation*

The progress in the path of Christian initiation that, in the canon under discussion, is implied by the sacrament of confirmation, has a specific meaning, which Paul VI expressed vigorously at the beginning of the Apostolic Constitution *Divinae consortium naturae*: "The consortium of

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6. Cf. p. BERNARD, "Confirmatio," in *Dictionnaire de Théologie Catholique*, III-1, cols. 1062–1070; p. GALTIER, *Imposition des mains*, ibid., VII-2, cols. 1387–1393.
7. *S. Th.*, III, q. 72, a. 1 ad 4 and a. 5 ad 1.
8. *S. Th.*, III, q. 63, a. 3.
9. Secr. St. March 3, 1547, c. 1 *De sacram. confirmationis.*
10. "Nota de la Comisión Episcopal para la doctrina de la fe sobre algunos aspectos doctrinales del sacramento de la confirmación," 3, in *BOCEE* 32 (1991), p. 158. Cf. T. RINCÓN-PÉREZ, "La salvaguardia de los derechos de los fieles en el proceso de preparación para los sacramentos," in *Fidelium iura* 3 (1993), pp. 124–125.

divine nature, with which man is enriched through the grace of Christ, bears a certain resemblance to the birth, growth and nourishment of natural life. So the faithful are born again through baptism, strengthened by the sacrament of confirmation, and finally nourished with the bread of eternal life in the Eucharist, in such a way that, through these sacraments of Christian initiation, they participate more and more in the treasures of divine life and progress in the perfection of charity."[11]

This understanding of confirmation as a *growing and strengthening* in the divine life and in the perfection of charity clarifies the harmonious relationship existing between baptism and confirmation as sacraments of Christian initiation. This is a fact of unquestionable importance, stressed in *Sacrosanctum Concilium* 71: "The rite of confirmation is to be revised also so that the intimate connection of this sacrament with the whole of the Christian initiation may more clearly appear." This is also the sense of the words of the Melkite Patriarch Maximus IV at the Vatican Council II, who, highlighting the Eastern tradition of conferring both of these sacraments of Christian initiation at the same time,[12] is a witness of the specific sacramental nature of each of them, consistent with the communion of faith with which the Eastern and Western churches confess seven sacraments.

The initiatory character of confirmation implies that those who are going to receive this sacrament must advance in their doctrinal formation through specific preparation, required for the lawful reception of the sacrament in c. 889 § 2, and parallel to the provisions set forth in cc. 865 and 867 § 1 in relation to baptism. It is the importance of this doctrinal formation that has motivated the corresponding rituals to set guidelines for such catechesis. But, the importance of these guidelines must not lead one to forget the wise observation made in the Vatican Council II chamber by the then Cardinal Wojtyla: "Christian initiation, from the pastoral point of view, overflows the sacraments of baptism and confirmation."[13]

Therefore, once the sacrament of baptism and confirmation are received, the pastoral action of the Church must offer a continuing care of souls that keeps teaching, educating and healing each of the faithful so that, comforted by this care, they may seek the sanctity of life distinctive of those who have been confirmed and strengthened in Christ. In this, "the Eucharist appears as the source and the summit of all preaching of the Gospel: catechumens are gradually led up to participation in the Eucharist, while the faithful who have already been consecrated in Baptism and

11. *AAS* 63 (1971), p. 657.
12. G.H. BAUDRY, "La réforme de la confirmation de Vatican II à Paul VI," in *Mélanges de science religieuse* 45 (1988), pp. 86–88.
13. *Acta Synodalia Sacros. Conc. Oecum. Vaticani II*, vol. I, periodus prima, pars II, p. 315. Cf. G.H. BAUDRY, "La réforme...," cit., p. 92.

confirmation are fully incorporated in the Body of Christ by the reception of the Eucharist" (*PO* 5).

Along the lines of this mutual complementarity of the three sacraments of Christian initiation, c. 842 § 1 states: "The sacraments of baptism, confirmation and the blessed Eucharist so complement one another that all three are required for full Christian initiation." Because of the unity between confirmation and the Eucharist as sacraments of initiation, c. 881, in accordance with provisions of liturgical law (cf. RCIA, 34–36), points to the appropriateness of celebrating the sacrament of confirmation within Mass (see commentary on c. 881). On the other hand, the relationship between the Eucharist and the other sacraments of initiation is the reason for providing in c. 913 that it is necessary that children be given careful preparation to receive the Eucharist. But, at the same time, the Eucharist has a value that goes beyond the scope of Christian initiation, since, as c. 897 states that the Eucharistic sacrifice "is the summit and the source of all worship and Christian life. By means of it the unity of God's people is signified and brought about, and the building up of the body of Christ is perfected. The other sacraments and all the ecclesiastical works of the apostolate are bound up with, and directed to, the blessed Eucharist."

3. *Witness to a strong and mature faith*

"By Confirmation Christians, that is, those who are anointed, share more completely in the mission of Jesus Christ and the fullness of the Holy Spirit with which he is filled, so that their lives may give off 'the aroma of Christ' (2 Cor 2:15)" (CCC, 1294). This vocation of the confirmed is based on the sacramental effect first brought about by this sacrament, which "is the full outpouring of the Holy Spirit as once granted to the apostles on the day of Pentecost" (CCC, 1302). This outpouring of the Holy Spirit induced the Apostles to witness to the name of Christ, and the ecclesial mission of the confirmed is projected along the same lines, since, as the Council of Florence states, "the effect of this sacrament is that in it the Holy Spirit is given for strength, just as it was given to the Apostles on the day of Pentecost, so that the Christian may confess the name of Christ with audacity."[14]

The apostolic vocation of the confirmed, integrated into the mission that the Church has received of announcing Christ to the world, with words and works, is realized in different forms (cf. *AA* 6), by those who, having received the *ministerium verbi et sacramentorum*, must have be attentive to the faithful *tanquam patres in Cristo*, showing their priestly and pastoral face (cf. *LG* 28). For the laity, "it pertains to them in a special way so to illuminate and order all temporal things with which they are so

14. CONC. FLOREN., Secr. St.. VIII, *Bulla unionis Armeniorum*.

closely associated that these may be effected and grow according to Christ and may be to the glory of the Creator and Redeemer" (*LG* 31). In the performance of this apostolic mission, the laity must, "being in close contact with men through their life and work, hope to offer them an authentic Christian witness and work for their salvation, even in those places where they cannot preach Christ in full. They are not working for the merely material progress or prosperity of men; but in teaching the religious and moral truths, which Christ illumined with his light, they seek to enhance the dignity of men and promote fraternal unity, and in this way, are gradually opening a wider approach to God" (*AG* 12; cf. *AG* 11 and 15).

In any case, in the performance of these different forms of apostolate, one must take into account that "It is the Father's will that we should recognize Christ our brother in the persons of all men and love them with an effective love, in word and in deed, thus bearing witness to the truth. In this way men all over the world will awaken to a lively hope that they will one day be admitted to the haven of surpassing peace and happiness in their homeland radiant with the glory of the Lord" (*GS* 93).

Without going into the origin of the variety of forms of the apostolate, the maturity in faith and the audacity to witness to Christ which flow from the grace given in confirmation obliges us to take into consideration which paths make it possible to be faithful to the duty of witnessing to Christ. Along these lines, Vatican II stressed that all Christians "have a right to a Christian education. A Christian education does not merely strive for the maturing of a human person as just now described, but has as its principal purpose this goal: that the baptized, while they are gradually introduced the knowledge of the mystery of salvation, become ever more aware of the gift of Faith they have received, and that they learn in addition how to worship God the Father in spirit and truth (cf. Jn 4:23) especially in liturgical action, and be conformed in their personal lives according to the new man created in justice and holiness of truth (Eph 4:22–24); also that they develop into perfect manhood, to the mature measure of the fullness of Christ (cf. Eph 4:13) and strive for the growth of the Mystical Body; moreover, that aware of their calling, they learn not only how to bear witness to the hope that is in them (cf. Pt 3:15) but also how to help in the Christian formation of the world that takes place when natural powers viewed in the full consideration of man redeemed by Christ contribute to the good of the whole society" (*GE* 2).

In relation to the maturity of this witnessing that is the duty of the confirmed, it must be remembered, with Vatican Council II, that "since Jesus, the Son of God, manifested His charity by laying down His life for us, so too no one has greater love than he who lays down his life for Christ and His brothers (230) From the earliest times, some Christians have been called upon, and some will always be called upon, to give the supreme testimony of this love to all men, especially to their persecutors. The Church considers martyrdom an exceptional gift, the fullest proof of

love. By martyrdom, a disciple is transformed into an image of his Master by freely accepting death for the salvation of the world, as well as conformity to Christ in the shedding of his blood. Though few are presented such an opportunity, nevertheless, all must be prepared to confess Christ before men, even in the midst of persecutions, which will never be lacking to the Church, in following the way of the cross" (*LG* 42).

The strength and maturity with which the confirmed must give witness to Christ is projected regarding the consistency with which the Church, "by preaching the truths of the Gospel, and bringing to bear on all fields of human endeavor the light of her doctrine and of a Christian witness, she respects and fosters the political freedom and responsibility of citizens" (*GS* 76). The strength of the Holy Spirit, received by the confirmed, will move them to be faithful to the duty of giving witness and defending their faith when the public powers adopt provisions that cannot be reconciled with the law of Christ: "When they take you to the synagogues, before the magistrates and the authorities, do not worry about how or what you must answer or say, because the Holy Spirit will teach you at that time what you must say" (Lk 12:11–12). This gives meaning to the doctrine that places in the public scope the right and the duty that the confirmed have to give witness to Christ with maturity and strength: "confirmatus accipit potestatem publice fidem Christi verbis profiteri, quasi ex officio."[15]

The public character of the testimony of faith that must be given by the confirmed is linked to the vision that the early Church had regarding the confessor of the faith: his confession had to be performed *ductus coram potestate*, which carried the consequence of being *castigatus in catenis* or being *inclusus in carcere*. It was not enough to confess the faith and risk a simple *castigatio domestica.*[16] *That is why, in Dignitatis humanae* 11, while insisting on the necessity of recognizing the legitimacy of the civil authority, Vatican II stressed that the children of the Church "did not hesitate to speak out against governing powers which set themselves in opposition to the holy will of God ... This is the way along which the martyrs and other faithful have walked through all ages and over all the earth." This existing relationship between martyrdom and the confession of the faith before the public powers, as Cardinal Ratzinger has pointed out, is a consequence of the conflict between the Church and the world. Therefore, only confessing the power of the Pope and of the ecclesiastical hierarchy makes martyrdom before the civil powers possible, because if the power of the Church was assimilated to that of the state, or worldly dominion over the Church were admitted, martyrdom would, in good measure, have been eliminated.[17]

15. *S. Th.*, III, q. 72, a. 5 ad 2. Cf. J.M. RIVAS, "Efectos jurídicos del sacramento de la confirmación," in *Ius Canonicum* 6 (1966), pp. 406–410.

16. Cf. B. BOTTE, *La Tradition Apostolique de saint Hippolyte* (Minden 1966), p. 28.

17. Cf. J. RATZINGER, *Iglesia, ecumenismo y política. Nuevos ensayos eclesiológicos* (Madrid 1987), pp. 44–47.

While martyrdom is the pre-eminent form of public witness to Christ, it does not exhaust the scope of confession of faith before the public powers to which the confirmed are called. Vatican II shows the possibilities open to the laity in this area in virtue of its ecclesial vocation, but "let them not hide this their hope then in the depths of their hearts, but rather express it through the structure of their secular lives in continual conversation and in 'wrestling against the world rulers of this darkness, against the spiritual forces of iniquity' (Eph 6:12)" (*LG* 35).

The struggle with the dominators of this world, which is proper to the ecclesial mission of the confirmed, takes on greater significance in a world in which laws and social customs often ignore permanent values. The laity "are given this special vocation: to make the Church present and fruitful in those places and circumstances where it is only through them that she can become the salt of the earth" (*LG* 33). Thanks to the fact that, through confirmation, they have with them forever the "Spirit of the truth that the world cannot receive" (Jn 14, 17), the faithful will not falter in their effort to perform "their special vocation ... to seek the kingdom of God by engaging in temporal affairs and directing them according to God's will" (*LG* 31). "By uniting their forces, let the laity so remedy the institutions and conditions of the world when the latter are an inducement to sin, that these may be conformed to the norms of justice, favoring rather than hindering the practice of virtue" (*LG* 36).

4. *Duty of the confirmands in canonical terms and their full incorporation into the Church*

The statement of the canon under discussion that the confirmed *remain linked more perfectly to the Church* is readily understandable, because it is through the Holy Spirit, the source of living water that springs up to eternal life, that the Father gives life to men, "dwells in the Church and in the heart of the faithful, as in a temple (cf. 1 Cor 3:16; 6:19). In them he prays and bears witness to their adopted sonship (cf. Gal 4:6; Rom 8:15–16, 20). Guiding the Church in the way of all truth (cf. Jn 16:13) and unifying her in communion and in the works of ministry, he bestows on her varied hierarchic and charismatic gifts" (*LG* 4). In this way, the testimony of living faith that the confirmed must give is consistently integrated into the prolonged redeeming action performed by all the Church which "has been sent to those who live in the same territory as itself, but do not believe in Christ so that it might be for them, by the example of the lives of the faithful and of the whole community, a sign indicating Christ" (*AG* 20).

This teaching agrees with the doctrine of the Angelic Doctor, who sees confirmation as *sacramentum plenitudinis gratiae*,[18] as *quoddam spirituale augmentum promovens hominem in spiritualem aetatem*

18. *S. Th.*, III, q. 72, a. 1 ad 4 and a. 5 ad 1.

perfectam,[19] *quasi ultima consummatio baptismi.*[20] These expressions reflect Saint Paul's teachings about this sacrament from antiquity: "But it is God who establishes us with you in Christ, and has commissioned us; he has put his seal upon us and given us his Spirit in our hearts as a guarantee" (2 Cor 1: 21–22).

This capacity to bear witness to Christ, granted by the Holy Spirit and received at confirmation, can only reflect positively on canonical determinations that take into consideration the potential of this sacrament to dispose the faithful to receive other sacraments: "Only one who has received the sacrament of sacred confirmation may lawfully be promoted to orders" (c. 1033). Moreover, this also applies to marriage (c. 1065 § 1).

It behooves us to ask, in a more general way, if the strength conferred by the gift of the Holy Spirit, received in confirmation, should influence the duty of and right to the apostolate that all faithful have. The texts of Vatican II related to this issue (cf. *LG* 33; *AA* 3) do not allow them to be used as grounds for a specific scope of the duty of and right to the apostolate that the Church recognizes as that of the confirmed. Neither does the current code, in formulating the duty of and right to the apostolate, in c. 211, establish any specification related to confirmation, which is consistent with the general character of its exposition. Consequently, it must be concluded that canon law, outside the determinations established in cc. 1033 and 1065 § 1 on the lawful reception of the sacred orders and of marriage, does not mention the influence of confirmation in the juridical configuration of the statute of the faithful.

19. Ibid., a. 5.
20. *S. Th.*, III, q. 72, a. 9. Cf. E. TEJERO, "La 'res et sacramentum'..." cit., pp. 440–442.

CAPUT I
De Confirmationis celebratione

CHAPTER I
The Celebration of Confirmation

880 **§ 1. Sacramentum confirmationis confertur per unctionem chrismatis in fronte, quae fit manus impositione atque per verba in probatis liturgicis libris praescripta.**

§ 2. Chrisma in sacramento confirmationis adhibendum debet esse ab Episcopo consecratum, etiamsi sacramentum a presbytero ministretur.

§ 1. The sacrament of confirmation is conferred by anointing with chrism on the forehead, which is done by the laying on of the hand, and by the words prescribed in the approved liturgical books.

§ 2. The chrism to be used in the sacrament of confirmation must have been consecrated by a Bishop, even when the sacrament is administered by a priest.

SOURCES: § 1: c. 780, 781 § 2; PAULUS Pp. VI, Ap. Const. *Divinae consortium naturae*, 15 aug. 1971 (*AAS* 63 [1971] 657, 664); PC-IDSVC Resp., 6 iun. 1972 (*AAS* 64 [1972] 526); RConf 9
§ 2: c. 781 § 1; *Ordo Benedicendi Oleum Catechumenorum et Infirmorum et Conficiendi Chrisma*, 3 dec. 1970, *Prae* 6; RConf 10

CROSS REFERENCES: —

COMMENTARY

José Luis Gutiérrez-Martín

1. *Liturgical expression of the sacrament*

Canon 880 regulates the liturgical expression of the sacrament of confirmation, in regard to its fundamental structure. By fundamental structure, we mean that reality which was expressed in the classical manuals, starting from Aristotelian philosophical terminology, as sacramental *substance and form*. That terminology does not appear in the most recent magisterial documents, in the *CIC*, or in its sources.[1] In the liturgical books, *essence of the sacramental rite* is the preferred term, an expression the CCC will later adopt as *essential rite* (cf. CCC, 1300).

The conclusion expressed by the *CIC* and incorporated into the ritual practice of the liturgical books[2] is based on the doctrine formulated in 1971 by the Apostolic Constitution *Divinae consortium naturae*. After an exhaustive analysis of eucharistic, liturgical, theological, and magisterial texts, this Constitution established that, in the future, the following was to be observed in the Latin Church: "The sacrament of confirmation is conferred by anointing with chrism on the forehead, which is done by the laying on of the hand, and by the words: 'accipe signaculum doni Spiritus Sancti' [receive by this sign the gift of the Holy Spirit]."[3] The Constitution defined this as "the essence itself of the rite of the sacrament," and this doctrine was incorporated into the *praenotanda* of the liturgical books (cf. RConf, 9; cf. also CCC, 1300).

With the promulgation of this apostolic constitution and the relevant liturgical texts, the sacramental practice incorporated by the *CIC*/1917 was repealed, which had stated that "the sacrament of confirmation must be conferred by the laying on of the hand, together with the anointing with chrism of the forehead, and by the words prescribed in the pontifical books approved by the Church" (c. 780 *CIC*/1917). The apostolic constitution introduced a modification with "the purpose that the revision of the rite of confirmation (cf. *SC* 71) also opportunely comprehend the essence itself of the sacramental rite."[4]

1. Cf. PAUL VI, Ap. Const. *Divinae consortium naturae*, June 15, 1971, in *AAS* 63 (1971), pp. 657–664; cf. also the liturgical books currently in use: see *infra*, note 2.
2. After the liturgical reform promoted by the Vatican Council II, the rite of Confirmation, adapted to the circumstances of the candidates, can be found in two different books: RConf (1971) and RCIA (1972, 2nd ed. 1974). Logically, in both cases, the fundamental structure of the sacrament remains the same.
3. Ap. Const. *Divinae consortium naturae*, cit., pp. 663–664.
4. Ibid., p. 663.

2. *Differences from the previous sacramental practice*

The differences between these texts must not be considered merely stylistic, since they manifest a different understanding regarding the essential expression of the sacrament of confirmation. For the *CIC*/1917, the *substance* of confirmation was composed of the laying on of the hand and the anointing with chrism, two simultaneous but different gestures. A commentary on c. 780 of the *CIC*/1917 explained, "As we can easily deduce from the foregoing up to now, anointing and the laying on of hands, considered separately, are closely related parts of the sacrament; which together result in the complete material element of the sacred rite."[5] In reality, this exegesis of the canon did no more than assume the ritual practice introduced by Benedict XIV (1756), who had modified the rubric of the post-tridentine Pontifical, so that, during anointing, the ministers laid on their hand, flat, over the head of the candidate: "quod dum dicit ... [sacramental formula], imposita manu dextera super caput confirmandi, producit pollice signum crucis in fronte illius ... ." In this way, the dual sacramental *substance* was manifested, in contrast to the common theological doctrine, which was inclined to anointing alone as the essential element of the sacrament. This ritual practice was also the basis of c. 781 § 2 of the *CIC*/1917, which provided that "anointing shall not be done with any instrument, but with the hand of the minister himself, duly placed on the head of the confirmation candidate."

The new draft is inclined, however, towards the presence of a single essential gesture, anointing with chrism, which would assume the theological meaning of the laying on of the hand testified to in the apostolic writings.

In effect, the intention of the legislator is not reduced to a mere modification of nuance. On the contrary, in the present doctrine of the Magisterium, confirmation is conferred by anointing with chrism alone, for this element adequately signifies the apostolic laying on of hands. The Apostolic Constitution *Divinae consortium naturae* expresses it this way: "In the conferring of confirmation in the Eastern and Western Churches ... the anointing with chrism occupied the first position, which represents in some manner the laying on of hands used by the Apostles."[6] This is manifested in the rubrics of the present ritual when, in contrast to the prior ritual, it is not provided that the minister lay his right hand on the head of the candidate during the anointing: "the Bishop dips the thumb of his right hand into the holy Chrism and makes the sign of the cross with it on the forehead of the confirmation candidate" (RConf 34).

The point was made clearer in a response of the PCIDSVC, when it stated that, during the anointing, it is not necessary to lay on the hand,

5. *Comentarios al Código de Derecho Canónico*, II (Madrid 1963), p. 163.
6. Ap. Const. *Divinae consortium naturae*, cit., p. 663.

since the understanding of the norm of the Constitution was that the dipping of the thumb into the Chrism manifested the laying on of the hand.[7] This assimilation of the laying on of the hand into anointing had been expressed by medieval theologians and assumed by the Magisterium.[8]

3. *The historical problem*

Throughout the centuries, attempts have been made to determine the indispensable elements that constitute the essential elements of confirmation.[9] The difficulty of the task springs from the historical development of the liturgy of the sacrament, thus, "right from the beginning, the gift of the Holy Spirit was conferred in the Church with various rites."[10] Nevertheless, numerous investigations, frequently impassioned and not always unanimous,[11] confirm the presence of an incontrovertible fact, which served as the basis for subsequent theological developments: the tradition of the Church recognized a second sacramental moment of Christian initiation in close ritual, theological, temporal and salvific union with baptism. This sacrament, which, in the Roman liturgy today generally is celebrated autonomously, is called confirmation.[12]

When the different liturgical families began to be formed (third to fifth centuries), liturgical sources show that Christian initiation was articulated in *the catechumenate*—in which the incorporation of the candidate into the mystery of the Church occurred, each time more fully, by means of several sacramental rites that revolved about three axis: baptismal cleansing, post-baptismal gestures, and the reception of the Eucharist.[13] Among the post-baptismal gestures that formed an organic unity with baptism and conferred the full gift of the Spirit, two, anointing and the laying on of the hand, appeared as fundamental elements. Within the Latin tradition, the testimony of the African Church is very clear.[14] On the other hand, Ligier

7. Cf. *AAS* 64 (1972), p. 526.
8. Cf. Ap. Const. *Divinae consortium naturae,* cit., p. 661.
9. Cf. ibid., p. 661.
10. Ibid., p. 660.
11. In addition to the historical overview of the biblical, liturgical, theological, and magisterial evidence presented by the Ap. Const., cf., e.g., L. LIGIER, *La confermazione. Significato e implicazioni ecumeniche ieri e oggi* (Rome 1990) (trans. of the French original, *La confirmation: sens et conjoncture œcuménique hier et aujourd'hui* (Paris 1973)); R. FALSINI, "Confirmación," in *Nuevo Diccionario de Liturgia* (Madrid 1987), pp. 423–452; A. NOCENT, *I tre sacramenti dell'iniziazione cristiana: Anàmnesis.* 3/1: *La Liturgia, i sacramenti,* 2nd ed. (Rome 1989), pp. 97–13.
12. According to L. LIGIER, the term "confirmatio" began to be used in the Latin Churches around the IV-V centuries (cf. *La confermazione...,* cit., p. 251).
13. Cf., e.g., Ap. Const. *Divinae consortium naturae,* cit., pp. 660–661.
14. Cf., e.g., J.L. GUTIÉRREZ-MARTÍN, *Iniciación cristiana y liturgia eucarística en el Africa del siglo IV* (Rome 1994) (doctoral thesis defended at the Pontifical Liturgical Institute at St. Anselmo).

has shown that the laying on of hands was not unknown in the East as a post-baptismal gesture; on the contrary, it appears that, as the oldest practice, it was progressively incorporated into anointing to avoid the danger of confusion with other rites, like the reconciliation of heretics.[15]

Nevertheless, with the passage of the centuries, both in the Eastern and Western traditions, and even more on the level of theological-magisterial reflection than in strict ritual matters, both gestures converged in anointing, which occurs by making the sign of the cross with chrism (we have already pointed out the attempt of Benedict XIV to preserve, on the ritual level, the gesture of the laying on of the hand, according to a practice that was in effect up to the publication of the new liturgical books). The doctrinal conclusion of Apostolic Constitution did no more than to continue with this theological process.

4. *Current sacramental practice*

From the foregoing, it follows that the fundamental structure of the sacrament of confirmation must be considered from an gesture that, according to apostolic tradition, signifies the gift of the Spirit, and from several words that indicate the sacramental mystery that is celebrated. It falls to the lawful authority to establish in each case, in light of liturgical and theological tradition, the expression and essential words of the sacrament. Therefore, the last magisterial declaration does not intend *to define the fundamental structure* of the sacrament, but *to establish a sacramental practice* that the Latin Church would follow.[16] In fact, the complexity of the problem regarding structure is revealed when the apostolic constitution states that the laying on of hands anticipates anointing, the only gesture of laying on of hands, in the current practice. Even though it does not belong to the essence of the sacramental rite, it forms a part of its entirety: "Although it does not belong to the essence of the sacramental rite, it must be seriously considered, since it forms a part of the perfect entirety of the rite itself."[17]

a) *Chrism*

The Latin term *chrisma* is derived from a transliterated Greek word that means unguent. In the Latin language, in contrast to the Greek, the expression *chrisma* alluded to the fact of anointing. Optatus of Milevi (4th century) was the first Latin author who used the term in the passive sense of consecrated oil, after the invocation of Christ, the Anointed One, through which he was consecrated. [18]

15. Cf. L. LIGIER, *La confermazione...*, cit.
16. Cf. Ap. Const. *Divinae consortium naturae,* cit., pp. 663–664.
17. Cf. ibid., p. 664.
18. Cf. J.L. GUTIÉRREZ-MARTÍN, *Iniciación cristiana...*, cit., pp. 86–87.

The liturgical books provide that the rite of anointing the candidate is conferred though *chrism*, olive oil to which has been added balsam (aromas or perfumed substances[19]) that have been previously consecrated by the bishop, to whom, as § 2 of this canon recalls, said blessing falls.[20] The *CIC*/1917 had incorporated this doctrine "the chrism which must be used in the sacrament of confirmation must be consecrated by the bishop even though the sacrament is administered by priest" (c. 781 § 1). In this sense, it is interesting to note that the Eastern Churches reserve the blessing of the chrism to the bishop or, even, to the Patriarch, in spite of the fact that the sacrament is generally administered by priests (see commentary on c. 882).

It is also provided that, in individual cases, another vegetable oil can be substituted for olive oil.[21] The oil is a natural element that, because of its therapeutic, aromatic, combustible, and culinary properties, has broad biblical-liturgical symbolism expressing the anointing by the Spirit that returns one to health, illuminates, comforts ...

The bishop consecrates chrism during the chrism Mass, celebrated on the morning of Holy Thursday.[22] The consecration of chrism, which "precedes Confirmation, but, in a certain manner, forms a part of it" (CCC, 1297), can be done beforehand, in case of need, but always on a day close to Easter and during a Mass with the proper formulary language.[23]

Following the Latin liturgical tradition, chrism is blessed immediately before the dismissal of the faithful, when the rite of communion has concluded, although, for pastoral reasons, this blessing can also be done after the liturgy of the Word.[24] The current rite of consecration is simple, in relation to the liturgical practice prior to Vatican Council II:[25] the bishop mixes the oil and balsam,[26] calls for prayer, breathes on the chrism and, says the consecratory epicletic prayer. The Pontifical contains two formulas of consecration of the chrism. The first comes from the so-called *Gelasian Sacramentary*, while the second one is a new composition. Both texts present a good balance between the anamnesis of praise and the consecratory epiclesis.

19. Cf. RomPont, *Ordo benedicendi oleum cathecumenorum et infirmorum et conficiendi chrisma* (Rome 1970), no. 4.
20. Cf. ibid., no. 6.
21. Cf. RomPont, *Ordo benedicendi...*, cit., no. 3.
22. Cf. ibid., no. 9.
23. Cf. ibid., no. 10.
24. Cf. ibid., nos. 11–12.
25. Cf. ibid., nos. 23–25.
26. In any case, vinegar and balsam can be mixed together privately before Mass: cf. ibid., no. 5.

b) *The formula*

The formula that accompanies anointing with chrism was introduced with the promulgation of the new liturgical books, beginning with the norm established by the Apostolic Constitution *Divinae consortium naturae*:[27] "N., accipe signaculum doni Spiritus Sancti" (cf. RConf 34). This new formula was chosen by the liturgical commission in charge of the revision of the rite because of its age, which dated back to the fifth century in several Churches of Asia Minor.[28] On the other hand, as the Apostolic Constitution recalls, its roots were in the apostolic epoch.[29] The new formula expresses, moreover, the ritual action, appropriately signifying sacramental grace: the gift of the Spirit.[30]

27. The previous sacramental formula, to which c. 780 of the *CIC*/1917 referred, could already be found in the Roman Pontifical of the XII century: "N., signo te signo crucis, confirmo te chrismate salutis, in nomine Patris ..." (cf. M. ANDRIEU, *Le Pontifical Romain du XII siècle* (Vatican City 1938), p. 247). These "verba praescripta," as the *CIC*/1917 called them, constituted the *forma* of the Sacrament.

28. Cf. L. LIGIER, *La confermazione...*, cit., p. 31.

29. Cf. Acts 2:38.

30. Cf. L. LIGIER, *La confermazione...*, cit., p. 31.

881 **Expedit ut confirmationis sacramentum in ecclesia, et quidem intra celebrandis sunt servandi; quare leges liturgicae hucusque Missam et quolibet loco digno celebrari potest.**

It is desirable that the sacrament of confirmation be celebrated in a church and indeed during Mass. However, for a just and reasonable cause it may be celebrated apart from Mass and in any fitting place.

SOURCES: c. 791; *SC* 71; RConf 11, 13

CROSS REFERENCES: —

COMMENTARY

José Luis Gutiérrez-Martín

The liturgical expression of the sacrament of confirmation is regulated by c. 881, which provides that the church and the Holy Mass be the privileged time and place for its celebration. On this point, the Code differs from its principal source, where only the place for the administration of the sacrament was mentioned: "Although the church is the appropriate place to administer confirmation, nevertheless, for a cause proper and reasonable in the judgment of the minister, this sacrament can be administered in any other decorous place" (c. 791 *CIC* 1917). The *CIC*/1917 does not allude to the time of celebration because, generally, confirmation was administered to children who had not made their first communion. On the other hand, the change from the expression *administer confirmation* (*CIC*/1917) to *celebrate confirmation* (*CIC*) is very interesting, since it manifests a deeper and richer theological conception of sacramental reality.

However, the most important innovation in the drafting of the *CIC* is based on the relationship established between confirmation and the Eucharist, as sacramental manifestations on the journey of Christian initiation. In this way, the Code incorporated a suggestion of the conciliar Fathers,[1] which was also incorporated and broadened in the new rituals. In effect, where *SC* said "according to the circumstances," the new rituals say "normally." "Confirmation is normally held within the Mass, so that the

1. "The rite of Confirmation is to be revised also so that the intimate connection of this sacrament with the whole of the Christian initiation may more clearly appear. For this reason, the renewal of baptismal promises should fittingly precede the reception of the sacrament. Confirmation may be conferred within Mass when convenient" (*SC* 71).

connection of this sacrament with every Christian initiation is shown, which reaches its height in the Communion of the Body and Blood of Christ. For that reason the confirmation candidates participate in the Eucharist that completes their Christian initiation" (RConf, 11). Nevertheless, there is no doubt that this expression of the relationship between confirmation and the Eucharist, by means of the celebration of the sacrament within the Mass, has contributed to the fact that, when it is a matter of children or teenagers, confirmation is made after first communion, with the consequent break in the traditional initiatory order of the Church, baptism, confirmation, Eucharist, a fracture with serious repercussions in ecumenical relations with the Eastern Churches.

In light of the conciliar requirements, the liturgical books present three principal modalities for the celebration of the sacrament, based on whether the candidates are unbaptized adults,[2] or whether they are baptized persons, to whom confirmation is conferred within or outside of the Mass.[3] In the three methods, the central part of the rite contains the laying on of hands with epicletic prayer and cruciform chrismal anointing with the sacramental formula.

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2. Cf. RCIA, 361–365. The basis of the ritual lies in the unity existing between the three sacraments of initiation, all of which are received in the same celebration.

3. Cf. RConf, 20–33 and 34–49, respectively. To show the close connection existing between Confirmation and Baptism, it is advised that, together with the Liturgy of the Word, the point be made, in both cases, of highlighting the renewal of the baptismal vows and the recital of the Our Father (cf. RConf, 13). As regards the rite of Confirmation outside of Mass, intended, fundamentally, for those who have not yet received their First Communion, one must also take into account the celebration of the sacrament for a sick person in danger of death (RConf, 52–56).

CAPUT II
De Confirmationis ministro

CHAPTER II
The Minister of Confirmation

882 **Confirmationis minister ordinarius est Episcopus; valide hoc sacramentum confert presbyter quoque hac facultate vi iuris universalis aut peculiaris concessionis competentis auctoritatis instructus.**

The ordinary minister of confirmation is a Bishop. A priest can also validly confer this sacrament if he has the faculty to do so, either from the universal law or by way of a special grant from the competent authority.

SOURCES: c. 782 §§ 1 et 2; PIUS Pp. XI, Facul., 30 apr. 1929, 3 (*AAS* 21 [1929] 555); SCDS Instr. *Sacramenti Confirmationis*, 20 maii 1934 (*AAS* 27 [1935] 11, 12); SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946 (*AAS* 38 [1946] 349-358); *Rituale Romanum*, 1952, tit. III, ch. III; *LG* 26; *OE* 13, 14; RConf 7; *DPMB* 87c

CROSS REFERENCES: cc. 1, 132 § 1, 144 § 1, 387, 861, 883-888, 966 § 1, 867 § 1, 1013, 1015 §§ 1-2

COMMENTARY

Eloy Tejero

1. *The bishop, ordinary minister of confirmation*

Referring to the role of the bishop in relation to confirmation, this canon preserves the expression *ordinary minister*, despite that *Lumen gentium* 26, in commenting on the *munus sanctificandi* of the bishops, states that they *are the original ministers of confirmation*, and the

confirmation ritual,[1] utilizes the same expression. It was the participation of the Melkite Patriarch Maximus IV, in the working sessions held by the central commission of Vatican Council II, who most directly opposed the conciliar texts' naming the bishop as the ordinary minister of this sacrament. The Patriarch noted that an Ecumenical Council should expound doctrine in formulations that are respectful of the lawful diversity of liturgical and disciplinary uses in the Catholic Church. However, considering the bishop the ordinary minister of confirmation is a use proper to the Latin Church and is not in harmony with the Eastern tradition, in which, due to the conferral of the sacraments of Christian initiation simultaneously (baptism, confirmation, and the Eucharist) the joint administration of confirmation and the other two sacraments is ordinarily attributed to a priest. "It is true, said the Melkite Patriarch, that ordinary minister does not mean necessarily more than a minister who ordinarily administers this sacrament. But then why not employ another less equivocal work and say, as I propose, *primary, first, genuine, in his own right,* etc.?"[2]

However, this opposition to the Council's reference to the bishop as the ordinary minister of confirmation cannot prevent a specific classification of the ministry of the bishop respecting this sacrament, although there is doubt regarding a more appropriate adjective. In the canonical and liturgical purview, both the Eastern and Western tradition recognize that each conferral of confirmation is a prolongation of the episcopal ministry. Every time a priest administers this sacrament, he must do it with chrism consecrated by the bishop (cf. *OE* 13; c. 880 § 2). This makes it clear that, at every conferral of confirmation, "reference is made to the first effusion of the Holy Spirit on the day of Pentecost. Thus, after being filled with the Holy Spirit, the Apostles themselves transmitted it to the faithful by means of the laying on of hands. Thus the reception of the Holy Spirit through the ministry of the bishop more closely demonstrates the bond, which unites the confirmed to the Church, and the received mandate to bear witness of Christ among men."[3]

The *CIC* classifies the bishop as *ordinary minister of confirmation,* instead of taking the expression *original minister,* as Vatican II had done, which, far from explaining only the Latin discipline, could have preserved several disciplinary approaches of a more general character. The Code Commission justified its choice in favor of the expression *ordinary minister,* in line with the approach of Vatican II: "In the *schema* of the fundamental Law, which was proposed for the Latin Church and for the Eastern Churches, likewise it was declared that the bishops are the original ministers. But in the Code of Latin Canon Law, which serves only for the faithful

1. RConf, *Praenotanda,* no. 7.
2. *Acta et documenta Concilio Oecumenico Vaticano II apparando,* series II, vol. II, pp. 269–271. Cf. G.H. BAUDRY, "La réforme de la confirmation de Vatican II à Paul VI," in *Mélanges de science religieuse* 45 (1988), p. 88.
3. RConf, *Praenotanda,* no. 7.

of Latin rite, it is preferable to say that the bishop is the ordinary minister, for this manner of speaking seems more juridical and indicates that the bishop, by virtue of his order and his Episcopal office, has that authority and faculty. A priest who has received this authority from the Law itself or by means of a special faculty is called an extraordinary minister."[4]

Forgetting the specific reasons that motivated the codifiers to incorporate the terminology *ordinary minister/extraordinary minister*, one author states that "the expression *ordinary minister*, which unfortunately is found in the new *CIC*, again situates the Eastern priests as extraordinary ministers."[5] By ignoring that the canons of the *CIC*, as is indicated in its c. 1, (*are only for the Latin Church*), this opinion induces one to think that there is a comparison between the Eastern and Latin disciplines, when, in reality, we are faced with a disciplinary point that has been dealt with by the Latin Code with lawful autonomy, as c. 696 of the *CCEO* has also preserved correct autonomy in only contemplating the ministry of priests in the administration of this sacrament and not employing the ordinary minister/extraordinary minister terminology.

The classification of the episcopal ministry of confirmation as an ordinary ministry, besides incorporating the involvement of the bishop in every administration of this sacrament, expressed also by the other adjectives that substitute for the qualifier ordinary, has a specific use in the canonical system of the Latin Church, which is important not to ignore.

In the current Code, the binomial ordinary minister/extraordinary minister is employed only with respect to baptism (c. 861) and confirmation. In relation to this sacrament, to say that the bishop is the ordinary minister, as the members of the Code Commission expressly make note of, "indicates that the Bishop, by virtue of his holy orders and episcopal office, has this authority and faculty."[6] Although the text refers to *holy orders* and *office* as the basis of the ordinary ministry of the bishop, it is the episcopal order which is the basis for that ministerial exercise, which is not limited *expressis verbis* by any other canon, as likewise is his ministry over baptism limited (c. 861), nor over the sacrament of penance (c. 967 § 1), in contrast to the lawful limits provided in cc. 1013 and 1015 §§ 1 and 2, with respect to the administration of the sacrament of holy orders. In any case, it is evident that, because of his office, the diocesan bishop "is to strive constantly that Christ's faithful entrusted to his care may grow in grace through the celebration of the sacraments" (c. 387). Specifically, with respect to confirmation, "the diocesan bishop is bound to ensure that the sacrament of confirmation is conferred upon his subjects who duly and reasonably request it" (c. 885).

4. *Comm.* 3 (1971), p. 204.
5. R. CABIE, "La iniciación cristiana," in A.G. MARTIMORT (Ed.), *La Iglesia en oración* (Barcelona 1987), p. 656, note 40.
6. *Comm.* 3 (1971), p. 204.

2. *The priest endowed of faculty*

In relation to the valid administration of confirmation by priests, it is advisable to recall that the Roman disciplinary tradition did not accept it,[7] although, from the Council of Florence, it permitted Eastern priests to confer this sacrament every time they returned to communion with the Catholic Church, and, from the seventeenth to nineteenth centuries, it afforded to all Eastern Catholics, except the Italo-Greeks and Maronites, their custom of confirmation at the hands of priests.[8] Vatican II accentuated this by mandating that "the established practice with regard to the minister of confirmation, which has existed among Eastern Christians from ancient times, is to be fully restored. Accordingly priests are able to confer this sacrament, using chrism blessed by their patriarch or bishop" (*OE* 13). In addition, c. 696 *CCEO*, in accord with the provisions of *Orientalium Ecclesiarum* 14, provides that "all priests of an Eastern rite can confer this sacrament validly, either in conjunction with baptism or separately, on all the faithful of any rite, including the Latin rite."

The discipline of the Latin Church, reaffirmed in the Council of Trent,[9] underwent a profound innovation during the pontificate of Pius XII,[10] when it granted to parish priests with their own territory, vicars, financial officers, and the other priests with exclusive and stable care of souls, the faculty of confirming the faithful of their territory who were in danger of death. Subsequent decrees[11] supplemented that provision, by extending it to mission territories, the Eastern Catholic faithful who depended on Latin priests for the care of souls, military chaplains, and hospitals, among others.

In line with the prior provisions, although broadening the scope of its application, c. 882 provides that "a priest can also validly confer this sacrament if he has the faculty to do so, either from the universal law or by way of a special grant from the competent authority." Clearly, this is not a norm that intends to determine specifically who are the priests authorized to confer the sacrament of confirmation, since that will be specified by cc. 883–888. Its intent is to state concisely that a priest may validly confirm only if duly authorized.

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7. A. MOSTAZA RODRÍGUEZ, *El problema del ministro extraordinario de la confirmación. Estudio histórico-teológico canónico* (Salamanca 1952); idem., "La potestad de confirmar de los ministros extraordinarios," in *Revista Española de Derecho Canónico* 14 (1959), pp. 503–516; idem, "En torno al ministro de la confirmación," in *Revista Española de Derecho Canónico* 36 (1980), pp. 494–498.

8. M. MARUSYN, "L'unzione con il santo Myron," in *Nuntia* 2 (1976), p. 16; D. SALACHAS, *L'unzione cristiana nei Codici orientale e latino* (Bologna 1992), pp. 18–19.

9. *Sess.* VII, *De sacramento confirmationis*, 3.

10. Decr. *Spiritus Sancti munera*, September 14,1946, in *AAS* 38 (1946), pp. 349–358.

11. SCPF, Decr. *Post latum*, December 18, 1947, in *AAS* 40 (1948), p. 410; SCEC, Decr. *Cum ex c. 782,4*, May 1, 1948, in *AAS* 40 (1948), pp. 422–423.

Regarding the nature of this faculty, although c. 132 § 1 says that "habitual faculties are governed by the provisions concerning delegated power," it is far from stating the identity of both concepts. Doctrine has revealed varied opinions about the nature of the faculty that allows priests to confirm,[12] opinions that reflect the historical changes experienced in the discipline of the Latin Church. Presently, no one considers that a priest must be delegated power to confirm, because, by virtue of his ordination, he certainly receives this power, which, for its valid exercise, needs only an authorization, given that the Law of the Church has limited it by recognizing the original power of the bishop regarding this sacrament. Nevertheless, that limitation, by making necessary due authorization to exercise a power received through sacramental means, does not imply that a delegated power must to be received to confer this sacrament. This is a situation manifested with more clarity by the current system, for c. 966 § 1 requires that "in addition to the power of order, the minister has the faculty to exercise that power."

In intimate relationship with this issue is the question of whether the Church can supply the lack of authorization that the priest needs to confer this sacrament, in a case of common error of fact or law, or in cases of positive and probable doubt of law or fact, in conformity with the provisions of c. 144 § 1. Responding to an author who denied this possibility by asserting that the power of holy orders, which is the basis of action for the priest in the conferral of this sacrament, cannot be supplied by the Church, A. Mostaza[13] showed that, when conferring confirmation, the priest exercises the power of holy orders; but, since the valid exercises of that power is conditioned on the reception of the required authorization, by positive law, the Church can supply the authorization by the means provided in c. 144 § 1.

In light of the provisions of this canon, the principle of equality and correspondence of rites is applied with respect to the ministry of confirmation. Vatican II provided that all priests of an Eastern Catholic Church can confer this sacrament validly, either in conjunction with baptism or separately, on all the faithful of any Catholic Church, including the Latin. For liceity, however, they must follow what is laid down by their common and particular canon law. Latin Catholic priests, in accordance with the faculties they have in regard to the administration of this sacrament, also may administer it to the faithful of the Eastern Catholic Churches. For liceity, they must follow the prescriptions of common and particular canon law (*OE* 14).

12. A. MOSTAZA RODRÍGUEZ, *El problema...*, cit., pp. 101–159 and 239–314.
13. "La potestad de confirmar...," cit., pp. 514–516.

883 **Ipso iure facultate confirmationem ministrandi gaudent:**

1° intra fines suae dicionis, qui iure Episcopo dioecesano aequiparantur;

2° quoad personam de qua agitur, presbyter qui, vi officii vel mandati Episcopi dioecesani, infantia egressum baptizat aut iam baptizatum in plenam Ecclesiae catholicae communionem admittit;

3° quoad eos qui in periculo mortis versantur, parochus, immo quilibet presbyter.

The following have, by law, the faculty to administer confirmation:

1° within the confines of their jurisdiction, those who in law are equivalent to a diocesan Bishop;

2° in respect of the person to be confirmed, the priest who by virtue of his office or by mandate of the diocesan Bishop baptizes one who is no longer an infant or admits a person already baptized into full communion with the catholic Church;

3° in respect of those in danger of death, the parish priest or indeed any priest.

SOURCES: 1°: c. 782 § 3; RConf 7
2°: RConf 8; RCIA *Prae* 46, appendix 8; PCIDSVC Resp., 21 dec. 1979 (*AAS* 72 [1980] 105, 106); Resp., 25 apr. 1975 (*AAS* 67 [1975] 348)
3°: SCDS Instr., 20 maii 1934 (*AAS* 27 [1935] 11, 12); SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946 (*AAS* 38 [1946] 349–358); SCDS Resp., 6 mar. 1947; SCPF Decr. *Post latum a*, 18 dec. 1947 (*AAS* 40 [1948] 41); *SCCong* Decl., 7 oct. 1953, I (*AAS* 45 [1953] 758); *PM* 13; SCB Instr. *Nemo est*, 22 aug. 1969, 38, 39 § 4a (*AAS* 61 [1969] 633–634); RConf 7c; RA 31

CROSS REFERENCES: cc. 137 § 2, 144 § 1, 205, 368, 427, 566 § 1, 851, 852 § 1, 863, 865 § 2, 866, 1335

COMMENTARY

Eloy Tejero

Having provided in the prior canon that only a duly authorized priest can validly confer the sacrament of confirmation, this canon, in basic

agreement with what is established in the confirmation rite,[1] contemplates three different situations, in its attempt to specify which priests have the faculty to confirm by the law itself.

1. First, priests who are equivalent to a bishop are authorized. This refers to persons who, without having received episcopal ordination, exercise a capital office in the pastoral structures of the diocese, whether or not expressly provided for in the Code. Among these structures are those mentioned in c. 368, namely the territorial prelature, territorial abbey, apostolic vicariate, apostolic prefecture, and the apostolic administration erected in a stable manner. Also included in this section is the diocesan administrator, who, while the episcopal see is vacant, as c. 427 states, "has the duties of and has the power of the diocesan bishop, with the exclusion of that which by its nature or by the proper law is excepted," which evidently does not occur with respect to the conferral of confirmation. Without being explicitly mentioned in the Code, also included in no. 1° of this canon are those persons to whom is entrusted the conferral of this sacrament due to their exercise of an office equivalent to the bishop in pastoral structures governed by special laws, as could occur in military ordinariates or in similarly erected structures for the pastoral care of emigrants.

2. In contrast to no. 1° of this canon, which attributes the faculty to confirm to be exercised for the benefit of many people, both nos. 2° and 3° authorize a priest to confer this sacrament on a single person in the circumstances stated in the canon.

The case contemplated in no. 2° may occur in two ways, on the occasion of baptizing an adult and when admitting a baptized person into the full communion of the Catholic Church.

In relation to the faculty to confirm granted to one who baptizes an adult, it is essential to recall that "the provisions of the canons on adult baptism apply to all those who, having ceased to be infants, have reached the use of reason" (c. 852 § 1). Thus, "an adult who intends to receive baptism is to be admitted to the catechumenate and, as far as possible, brought through the various stages to sacramental initiation" (c. 851). Except for cases of danger of death, which are governed by c. 865 § 2, the catechesis received for Christian initiation that postulates the baptism of adults makes the provision of c. 866 reasonable: "Unless there is a grave reason to the contrary, immediately after receiving baptism an adult is to be confirmed." Moreover, this situation is contemplated by c. 863, which states: "The baptism of adults, at least of those who have completed their fourteenth year, is to be referred to the diocesan bishop, so that he himself may confer it if he judges this appropriate."

In light of these provisions regarding the baptism and confirmation of adults, one understands why the law authorizes priests to confer

1. RConf, *Praenotanda*, no. 7.

confirmation in this circumstance. If the bishop does not consider it advisable to confer baptism and confirmation on an adult, he can command a certain priest, whether constituted or not in ecclesiastical rank, to confer those sacraments on a particular adult; or he can consider it preferable that they be conferred by the parish priest, by reason of his office, which he does not have to receive then, by a new specific act, the faculty of confirming, for he is authorized *ipso iure*, by the letter of this canon.

On the other hand, this faculty can be directly exercised by the parish priest or, in conformance with the provisions of c. 137 § 2, be subdelegated to another priest. Likewise, it must be kept in mind that this faculty can be supplied in cases of common error and positive and probable doubt of law or fact, pursuant to the provisions of c. 144 § 1 (see commentary on c. 882).

Besides the faculty to confer confirmation granted to a priest who jointly confers baptism and confirmation, this canon also grants a faculty so that a priest can confer confirmation; because of his office or the mandate of the diocesan bishop, he must attend to the request of a baptized person, who, being outside of full communion with the Catholic Church (because he has not lived the life joined "with Christ in his visible body, through the bonds of faith, the sacraments and ecclesiastical governance" (c. 205), although he cannot be accused of a sin for having been born into and instructed in the faith of Christ within a separate Christian community (cf. *UR* 3)), petitions to be admitted into the Church through the *Rite of admission to full communion with the Catholic Church for those who have already been lawfully baptized*,[2] which implies the conferral of confirmation.

Regarding the reception of baptized persons into the Catholic Church, the *CIC* provides little guidance, in contrast with the attention given to the subject in the *CCEO*, which, in cc. 896–901, offers several criteria that closely follow those stated in *Orientalium Ecclesiarum* 4. Canon 896 *CCEO* incorporates the general principle of not imposing more requirements than those necessary on the baptized who voluntarily ask to be received into the full communion of the Catholic Church. Canon 897 determines that profession of the Catholic faith, after a suitable doctrinal preparation, is all that is required of the faithful coming from any non-Catholic Eastern Church, while c. 898 *CCEO* specifies who can welcome a bishop, cleric, or layman coming from a non-Catholic Eastern Church into the Catholic Church. Canon 899 *CCEO* states that non-Catholic Eastern clerics and bishops who come into full communion with the Catholic Church can exercise their sacred orders or power of governance, and c. 900 deals with the incorporation of minors into the Catholic Church.

2. RCIA, *Appendix*, pp. 183ff.

Finally, c. 901 *CCEO* deals with the reception of Eastern non-Catholics into the Catholic Church.

As to confirmation, no. 2° of this canon grants a priest the faculty to confirm only when, by his office or the mandate of the diocesan bishop, he has baptized an adult who is going to be confirmed, or when he receives a baptized adult. Therefore, this law does not authorize a priest to confirm an adult who was baptized in the Catholic Church and never embraced a non-Catholic tradition, but did not complete his sacramental initiation.

A doubt regarding this case was presented to the PCIDSVC, in view of the fact that the liturgical texts, in describing the situations in which a priest can confirm an adult by his office or mandate of the diocesan bishop, without having baptized him immediately prior, stated "[when a priest] admits a lawfully baptized adult to full communion with the Church."[3] The Response, of December 21, 1979, was negative, in that "a priest can confer confirmation on an adult who, having received baptism in the Catholic Church, after, through no fault of his own, never put that faith into practice." At the same time, it responded affirmatively that a priest "designated by the Bishop [can] admit into full communion with the Church an adult already baptized in the Catholic Church, who afterwards, thorough no fault of his own, was instructed in a non-Catholic religion."[4]

This distinction preserves all its reason for being, in view of the text of the canon upon which we are commenting, for, like the prior liturgical books, it employs the formula: "by reason of his office or mandate of the diocesan Bishop ... he admits one already baptized into full communion with the Catholic Church." Which, consistent with the referred to response of the PCIDSVC, it only applies when, for the subject's having been situated outside the visible structure of the Church (c. 205), the rite of full admission into the Catholic Church recovers its meaning, as long as the subject shows that will to join the Catholic Church; but not when someone, baptized in the Catholic Church, afterwards lives outside the practice of the Catholic faith and, without having joined another religious confession, receives the grace of a new conversion. For this case, the rite of admission into full communion with the Catholic Church is not provided for, but rather the assumption of the practice proper to the Catholic faith and, therefore, the case in fact regarding which the law grants a priest the faculty of conferring confirmation does not arise.

3. In no. 3°, the canon authorizes priests to confirm persons in danger of death who have not received this sacrament. Pius XII[5] gave this faculty to parish priests with their own territory, and it was subsequently broadened for mission territories, military chaplains, hospitals, and

3. RConf, *Praenotanda*, no. 7; *Ordo admissionis valide iam baptizatorum in plenam communionem Ecclesiae catholicae*, no. 8.
4. *AAS* 72 (1980), p. 105.
5. Decr. *Spiritus Sancti munera*, September 14, 1946, in *AAS* 38 (1946), pp. 349–358.

similar circumstances. Therefore, c. 566 § 1 authorizes every chaplain to confer confirmation in danger of death, and this canon confers the same faculty "on any parish priest and indeed any priest." With this last expression, the Code broadens the concession of this faculty, since the confirmation rite limits it "to any priest who is not under censure or canonical penalty."[6] It obeys the canonical provision to the breadth with which the Law of the Church determines that "if a censure prohibits the celebration of the sacraments ... the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death" (c. 1335).

6. RConf, *Praenotanda*, no. 7, c.

884 **§ 1. Episcopus dioecesanus confirmationem administret per se ipse aut curet ut per alium Episcopum administretur; quod si necessitas id requirat, facultatem concedere potest uni vel pluribus determinatis presbyteris, qui hoc sacramentum administrent.**

§ 2. Gravi de causa, Episcopus itemque presbyter, vi iuris aut peculiaris concessionis competentis auctoritatis facultate confirmandi donatus, possunt in singulis casibus presbyteros, ut et ipsi sacramentum administrent, sibi sociare.

§ 1. The diocesan Bishop is himself to administer confirmation or to ensure that it is administered by another Bishop. If necessity so requires, he may grant to one or several specified priests the faculty to administer this sacrament.

§ 2. For a grave reason the Bishop, or the priest who by law or by special grant of the competent authority has the faculty to confirm, may in individual cases invite other priests to join with him in administering the sacrament.

SOURCES: § 2: SCDS Decr. *Spiritus Sancti munera*, 14 sep. 1946 (*AAS* 38 [1946] 349–354); SCDS Relatio, 1 iul. 1957 (*AAS* 49 [1957] 943, 944); RConf 8

CROSS REFERENCES: cc. 2, 882, 883, 885

COMMENTARY

Eloy Tejero

In spite of broadening the situations in which a priest can administer the sacrament of confirmation, the Code does not cease to uphold the Latin tradition in relation to the bishop's role in confirmation. Thus, a fact as meaningful as the preservation of the concept *ordinary minister*, incorporated into c. 882 (see commentary), becomes detached. Along the same lines is the basic provision of c. 884: "The diocesan bishop is himself to administer confirmation or to ensure that it is administered by another bishop." Similarly preserving that fundamental criterion, c. 885 states that "[t]he diocesan bishop is bound to ensure that the sacrament of confirmation is conferred upon his subjects who duly and reasonably request it."

Nonetheless, to perceive the degree of evolution brought about by canon law after Vatican II on this subject, it is advisable to have in mind that this canon opens the door to the administration of confirmation by priests, which must be differentiated from the situations described in

c. 883, which in line with pre-conciliar canon law, authorize certain priests *a iure* to confer confirmation, although it might broaden the number of situations in which priests receive that faculty. This does not happen in c. 884, which, by incorporating the provisions before the confirmation ritual,[1] in its § 1 provides that the bishop, in case of necessity, may authorize *one or more specific priests* to confirm. Moreover, § 2 of this canon provides that, for a serious reason and in individual cases, other priests can be brought in to administer this sacrament.

In relation to the provisions of § 1, it is important to remember that, in 1970, the SCB granted the bishops of Latin America and of the Philippines the privilege of granting the faculty to confirm to one or more priests, in case of necessity, with the provision that they be constituted in ecclesiastical rank.[2] Such a limitation has not been incorporated into c. 884; therefore, the bishop is free to grant faculties to priests he considers most suited for this ministry. Nevertheless, it is advisable to recall that the diocesan bishop can provide this solution only when the need requires it, due to situations such as the impossibility of avoiding a delay in the administration of the sacrament, or the impossibility for the diocesan bishop to administer it personally or to be assisted by another bishop, stably connected or not to the diocese.

In practice, a more difficult case is presented in § 2, which contemplates the existence of a serious cause, such as that which "happens sometimes because of the large number of confirmation candidates,"[3] by virtue of which the bishop or priest with the faculty to confirm may have other priests assist him in the administration of the sacrament.[4] As to the qualities to be possessed by the assisting priests, the canon gives no indication, in contrast to the confirmation rite,[5] which provides: "It is necessary that these priests: a) Either have a ministry or particular office in the diocese, namely: they are either vicars general, or episcopal vicars or episcopal delegates, or vicars of a zone or regional vicars, or those who, by provision of the ordinary have a similar function. b) Either, they are parish priests of the place where confirmation is administered, or parish priests of the place to which the confirmation candidates belong, or priests who have worked especially on the catechesis of the confirmation candidates." It is evident that these criteria, being merely indicative, do not try to limit the free determination which, in order to grant the faculty to validly confirm, be made in each case. Otherwise, given the authority of the *CIC* over the liturgical texts (cf. c. 2), it is evident that, in conformity with c. 884 § 2, any priest legitimated for the exercise of his ministry can assist in the administration of confirmation.

1. RConf, *Praenotanda*, nos. 7 and 8.
2. *AAS*, 62 (1970), p. 121.
3. Ibid.
4. RConf, *Praenotanda*, no. 8.
5. Ibid.

885 **§ 1. Episcopus dioecesanus obligatione tenetur curandi ut sacramentum confirmationis subditis rite et rationabiliter petentibus conferatur.**

§ 2. Presbyter, qui hac facultate gaudet, eadem uti debet erga eos in quorum favorem facultas concessa est.

§ 1. The diocesan Bishop is bound to ensure that the sacrament of confirmation is conferred upon his subjects who duly and reasonably request it.

§ 2. A priest who has this faculty must use it for those in whose favour it was granted.

SOURCES: § 1: c. 785 § 1
§ 2: c. 785 § 2

CROSS REFERENCES: cc. 213, 376, 381 § 2, 387, 427 § 1, 528 § 2, 843 § 1, 866, 883–884, 889–891

COMMENTARY

Daniel Cenalmor

1. The two paragraphs of this canon, which correspond to the first two of c. 785 of the *CIC*/1917, specify, in relation to the sacrament of confirmation, the fundamental right of the faithful to receive the help of the spiritual goods of the Church from its sacred pastors (c. 213), and the correlative duty of sacred ministers not to deny the sacraments "to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them" (c. 843 § 1).

By diocesan bishop is meant not only the bishop of c. 376, but likewise everyone equivalent to him in law, that is, those who preside over other communities of the faithful assimilated into dioceses, namely the territorial prelature, territorial abbey, apostolic vicariate, apostolic prefecture, and apostolic administration erected in a stable manner (cc. 368, 381 § 2). All of them, because of their ministry in the corresponding hierarchical structures, have to ensure incessantly that the faithful entrusted to them grow in grace by the celebration of the sacraments (c. 387). Although some may not possess episcopal orders that make them original ministers of the sacrament of confirmation (cf. *LG* 26), they are endowed *ipso iure* with the faculty of conferring confirmation within the limits of their jurisdiction (c. 883,1°), to meet more easily the pastoral obligation established in this canon.

The military ordinary, who is also equivalent to a diocesan bishop "and has his own obligation, unless the nature of the matter or the particular statutes dictate otherwise" (*SMC* II § 1), constitutes a particular case; for, considering the peculiar characteristics of his pastoral work and the cumulative nature of his jurisdiction (cf. *SMC* IV), he will have a only subsidiary obligation.

The diocesan administrator, who is "bound by the obligations and enjoys the power of a diocesan bishop, excluding those matters which are excepted by the nature of things or by the law itself" (c. 427 § 1), will also have this obligation, to the extent his mandate continues for a long period of time. Nevertheless, inasmuch as the diocesan administrator is not the original minister of the confirmation, nor is he authorized *ipso iure* to administer this sacrament, he should turn to a bishop to administer it, or ask to be granted the respective authority by the Apostolic See.

2. The obligation of the diocesan bishop to which this canon refers is different from the content of c. 890, because it is broader regarding his subjects (fathers and pastors of souls, especially all parish priests), diverse in its content (suitable preparation for confirmation and its reception at an opportune time), and independent from the petition of the subject of the sacrament. Moreover, this canon details a stricter obligation, the limits of which, in congruence with those expressed in c. 843 § 1, relative to any sacrament, are only that the petition is made *rite et rationabiliter.* To this end, the diocesan bishop will tend to the fulfillment of the requirements established in cc. 889 and 891 (see commentary). In addition, just as the petition must be reasonable, in turn, a refusal to administer the sacrament will have to be reasonable.[1]

The parish priest and those equivalent to him (c. 516; cf. *SMC* VII) will aid the diocesan bishop in this obligation, by exercising their responsibility in the preparation of the faithful for confirmation, and by their access *opportuno tempore* to the sacrament (c. 890). This is because it is their function to work so that the faithful are nourished by the pious celebration of the sacraments (c. 528 § 2), besides being especially entrusted with the administration of confirmation to those in danger of death (c. 530,2°).

3. As stated in § 2 of this canon, priests who have the faculty of conferring confirmation, whether by the Law itself (c. 883) or by special concession (c. 884), must use it for those in whose favor it was granted. They are given competence, not as a privilege or a badge of honor, but to serve the Christian community,[2] which has the right to receive the sacrament

1. Cf. E. TEJERO, commentary on c. 885, in *Pamplona Com.*
2. Cf. A. MOLINA MELIÁ, commentary on c. 885, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 411.

from its pastors (c. 213), as long as its members meet the requirements. Thus, the pastors will serve them as a genuine duty, never at their whim.

4. In the new Code, the provisions of § 3 and 4 of the *CIC*/1917 have been omitted, which stated that "the Ordinary who is lawfully impaired or who lacks authority to confer confirmation, must, to the extent possible, take opportune measures so that, at least every five years, this sacrament is administered to his subjects," as well as noting the obligation of metropolitans to inform the Holy See of possible abuses by the suffragans due to serious negligence in the administration, by themselves or through others, of the sacrament of confirmation to their subjects. However, this simplification of the canon must not be interpreted as an attenuation of the obligation to administer the sacrament.[3] Canon 890, which reminds pastors of their obligation that the faithful receive confirmation at an opportune time (cf. c. 891), makes the first of these old provisions unnecessary. Moreover, in the event serious abuses were to occur due to negligence in the administration of this sacrament, the metropolitan, by virtue of c. 436 § 1,1°, undoubtedly should continue to inform the Holy See about them.

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3. Cf. F.R. McManus, commentary on c. 885, in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 637.

886 **§ 1. Episcopus in sua dioecesi sacramentum confirmationis legitime administrat etiam fidelibus non subditis, nisi obstet expressa proprii ipsorum Ordinarii prohibitio.**

§ 2. Ut in aliena dioecesi confirmationem licite administret, Episcopus indiget, nisi agatur de suis subditis, licentia saltem rationabiliter praesumpta Episcopi dioecesani.

§ 1. In his own diocese a Bishop may lawfully administer the sacrament of confirmation even to the faithful who are not his subjects, unless there is an express prohibition by their own Ordinary.

§ 2. In order lawfully to administer confirmation in another diocese, unless it is to his own subjects, a Bishop needs the permission, at least reasonably presumed, of the diocesan Bishop.

SOURCES: § 1: c. 783 § 1
§ 2: c. 783 § 2

CROSS REFERENCES: cc. 134, 368, 381, 882, 883, 887, 1384

COMMENTARY

Daniel Cenalmor

1. By virtue of his episcopal ordination, any bishop may validly confer confirmation on any of Christ's faithful anywhere. So, the elements relative to jurisdiction only concern the lawfulness of the administration of the sacrament, in contrast to the case of priests (c. 887).

In this canon, which comes from c. 783 of the *CIC*/1917, with several small changes, "bishop" refers to one of Christ's faithful who has received episcopal ordination (c. 375), and who has not been expressly prohibited from conferring confirmation, for example, because of censure (cc. 1331–1335). A bishop has "subjects" when he serves a diocese or equivalent ecclesiastical entity (c. 368; cf. *SMC* 1). Moreover, all faithful are subjects of the Pope (c. 331). Therefore, for other types of bishops, such as the titular bishops in the service of a dicastery of the Roman Curia, the norms regarding the administration of confirmation "in another diocese" are appli-

cable (c. 886 § 2).[1] Finally, "diocese" in this canon encompasses the other ecclesiastical structures comparable to it, in conformance with c. 368.

2. Pursuant to § 1 of this canon, any bishop can lawfully confirm his subjects, whether inside or outside his territory. In the current discipline, therefore, a bishop who wishes to lawfully confer confirmation on one of his subjects in another diocese is no longer required to get permission from the local ordinary, or to administer the sacrament "privately and without crosier and miter" (c. 783 § 2 *CIC*/1917).

Inside their diocese, the diocesan bishop and the coadjutor or auxiliary bishops can also lawfully confirm those members of the faithful who are not their subjects, "unless there is an express prohibition by their own ordinary" (§ 1). Their own ordinary is the ordinary from their domicile or quasi-domicile (cc. 102–103, 105–107, 134).

3. To lawfully confirm members of the faithful when they are neither subject to him nor inside his diocese, a bishop needs the permission, "at least reasonably presumed," from the diocesan bishop of the territory, whether or not it is the domicile of the confirmation candidates (§ 2). By permission "at least reasonably presumed," it is understood not only that permission, having been requested, would be obtained in all certainty,[2] but permission based upon reasons based upon which there would be no question of it being granted, if it were requested.

In the first *schemata* of this canon, as in c. 783 § 2 of the *CIC*/1917, any local ordinary could give permission; however, since the *Schema* 1982, permission may only be given by the diocesan bishop, that is any of those persons mentioned by c. 381. It is likely that the thrust of this provision is respect for the responsibility of the diocesan bishop for the administration of sacraments in his own particular church.[3]

4. Pursuant to the two paragraphs of this canon, two requirements must be met for a bishop to lawfully confirm on one of Christ's faithful who is not subject to him, in another diocese, to which the candidate does not belong: the permission, at least reasonably presumed, of the diocesan bishop of the place of confirmation, and the absence of any express prohibition by the candidate's own ordinary.

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1. Cf. K. LÜDICKE, commentary on c. 886, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1989), p. 886/1.
2. Cf. A. MOLINA MELIÁ, commentary on c. 886, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 411.
3. Cf. K. LÜDICKE, commentary on c. 886, cit., p. 886/1.

887 **Presbyter facultate confirmationem ministrandi gaudens, in territorio sibi designato hoc sacramentum extraneis quoque licite confert, nisi obstet proprii eorum Ordinarii vetitum; illud vero in alieno territorio nemini valide confert, salvo praescripto can. 883, n. 3.**

A priest who has the faculty to administer confirmation may, within the territory assigned to him, lawfully administer this sacrament even to those from outside the territory, unless there is a prohibition by their own Ordinary. He cannot, however, validly confirm anyone in another territory, without prejudice to the provision of can. 883, n. 3.

SOURCES: c. 784; SCEC Decr. *Cum, ex canone,* 1 maii 1948 (*AAS* 40 [1948] 423)

CROSS REFERENCES: cc. 132-134, 144, 882, 883, 884 § 1, 885 § 2, 1379

COMMENTARY

Daniel Cenalmor

1. A priest endowed of the faculty to administer confirmation *ipso iure* or by special concession of the competent authority (cc. 882–884), within the purview for which the faculty was granted to him, validly and lawfully administers confirmation even to foreigners, unless there is a prohibition by their ordinary, in which case he would act illicitly.

The purview for which the power to confirm is valid will depend on the manner in which the corresponding faculty was acquired: for cases in which it is received by reason of office (c. 883,1° and c. 883,2°, when the duty of baptizing an adult or admitting a person already baptized into full communion with the Catholic Church is tied to the office), the power will be restricted to the purview of said office; while for those others by whom the faculty is enjoyed because of a particular concession from the competent authority (cc. 882, 883,2°, when the duty of baptizing or admitting a person into full communion with the Church is obtained by mandate of the diocesan bishop, and c. 884 § 1), the purview of the faculty is determined through the directions established in its concession.[1]

2. This canon is explicit in stating that, outside the case provided for in c. 883,3° (the faculty of confirmation of a parish priest, and even of any priest, for those in danger of death), a priest endowed of authority to con-

1. Cf. K. LÜDICKE, commentary on c. 887, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1989), p. 887/1.

firm cannot validly administer the sacrament to *anyone* in a territory outside the one for which he has competence. Therefore, there is a difference in the ordinary power of confirmation possessed by the bishop, who validly administers this sacrament to any of Christ's faithful, both in his own territory and outside it (although for the lawful confirmation of other subjects, it is necessary to comply with the requirements of c. 886), and the faculty granted to a priest, who acts invalidly if he administers confirmation by contravening the limitations that the law or the concession of the competent authority provide for the exercise of that faculty (c. 132).[2]

3. As provided in c. 144, in case of common error of fact or law, or of positive and probable doubt of fact or law, the Church will supply the lack of faculty of a priest to administer confirmation, so that the confirmation would be valid.

2. Cf. E. TEJERO, commentary on c. 886–887, in *Pamplona Com.*

888 Intra territorium in quo confirmationem conferre valent, ministri in locis quoque exemptis eam ministrare possunt.

Within the territory in which they can confer confirmation, ministers may confirm even in exempt places.

SOURCES: c. 792

CROSS REFERENCES: cc. 591, 882

COMMENTARY

Daniel Cenalmor

The final canon of this chapter is derived from c. 792 of the *CIC*/1917, which provided that the bishop, within the boundaries of his territory, could administer confirmation even in exempt places. But c. 888 applies now this norm to all ministers of confirmation, in relation to the territory in which they are authorized to confirm.

The basis for the canonical exemption of some institutes of consecrated life under the jurisdiction of the local ordinary can be seen in c. 591. The territorial determination of a minister's power to confirm, in accordance with this canon, is not restricted by the fact that part of that territory may belong to an exempt institute of consecrated life. The power to confer confirmation is exercised validly and lawfully there.

CAPUT III
De confirmandis

CHAPTER III
The Persons to Be Confirmed

889 **§ 1. Confirmationis recipiendae capax est omnis et solus baptizatus, non confirmatus.**

§ 2. Extra periculum mortis, ut quis licite confirmationem recipiat, requiritur, si rationis usu polleat, ut sit apte institutus, rite dispositus et promissiones baptismales renovare valeat.

§ 1. Every baptized person who is not confirmed, and only such a person, is capable of receiving confirmation.

§ 2. Apart from the danger of death, to receive confirmation lawfully a person who has the use of reason must be suitably instructed, properly disposed and able to renew the baptismal promises.

SOURCES: § 1: c. 786; *Rituale Romanum,* 1952, tit. III, ch. I; RConf 12
§ 2: c. 786; *Rituale Romanum,* 1952, tit. III, ch. III; RConf 11

CROSS REFERENCES: cc. 530,2°, 842, 843, 845 § 1, 849, 883,3°

COMMENTARY

Tomás Rincón-Pérez

The present chapter addresses three types of norms concerning a person who is to receive the sacrament of confirmation: 1) the requirements of capacity and liceity to receive the sacrament; 2) the obligation of receiving it opportunely and properly prepared; and 3) the requirement of suitable age.

Although there is no explicit mention of the fundamental right to receive this sacrament, the norms contained in this chapter constitute a

method of regulating that right and, consequently, of lawfully limiting its exercise. Therefore, a correct interpretation of these norms shall keep in mind the implicit presence of that fundamental right (c. 213), as well as the duty that c. 843 impresses on sacred ministers of not "denying the sacraments to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them."

The norms incorporated here have a marked *canonical* character, in contrast to the former Code, in which norms were explicitly incorporated that either had a moral character, as was the case of the norm requiring a person to be in a state of grace to receive the sacrament effectively (cf. c. 786 *CIC*/1917), or a liturgical character (cf. c. 789 *CIC*/1917).

Let us now turn to the content of c. 889.

I. REQUIREMENTS FOR CAPACITY (§ 1)

The law provides the following requirements for capacity:

1. *Only the baptized*

Baptism is the door to the other sacraments (cf. c. 849); therefore, one who has not been baptized cannot be validly admitted to the other sacraments (cf. c. 842 § 1). Upon these two foundations of divine law is supported the requirement of capacity established in this canon.

In reference to this requirement, the difficulty that may arise relates to persistent doubt about the valid celebration of baptism, in which case the law has provided for conditional baptism (c. 869 § 1). Regarding persons baptized in non-Catholic ecclesial communities, c. 869 § 2 establishes that they should not be conditionally baptized "unless there is a serious reason for doubting the validity of their baptism, on the ground of the matter or the form of words used in the baptism, or of the intention of the adult being baptized or of that of the baptizing minister." Consequently, persons baptized in non-Catholic Churches or ecclesial communities are, in principle, capable of receiving the sacrament of confirmation.

If the Catholic authority needs to investigate whether a baptism was validly celebrated, a series of recommendations must be kept in mind, proposed by the new Ecumenical Directory of March 3, 1993:

a) "No question of validity of baptism is presented by those administered in the various Eastern Churches. It is therefore sufficient to establish the fact of baptism ..." (DE/1993 99).

b) "With respect to the Christians of other ecclesial churches and communities, before examining the validity of a Christian, it must be ascertained whether there is an agreement on the baptism (DE/1993 94), made by the churches and ecclesialcommunities of the regions or localities in question, and whether the baptism was effectively celebrated pursuant to the agreement. Nevertheless, it must be noted that the absence of a formal agreement regarding baptism must not automatically put the baptism in doubt" (DE/1993 99).

c) When these Christians produce official ecclesiastical proof, there is no reason to doubt the validity of a baptism administered in their churches or ecclesial communities, unless, in an individual case, doubt persists for the reasons incorporated into c. 869 § 2. In this case, resort must be had to conditional baptism, whose rite "must be administered in private and not in public" (ibid.).

2. *A baptized person who has not received confirmation*

Confirmation is one of the sacraments that imprint character; therefore, it cannot be repeated (cf. c. 845 § 1).

In the Catholic Church, this principle presents no difficulty, either in doctrine or in practice. If there is doubt about either the actual conferral of confirmation or its validity, the sacrament must be administered conditionally (cf. c. 845 § 2).

In ecumenical relations, the sacrament of confirmation (chrismation) administered in the Eastern Churches by a priest at the same time as baptism does not present special difficulties. It happens frequently in the canonical testimony of baptism that no mention of is made of confirmation. Pursuant to the new Ecumenical Directory, "this in no way authorizes the questioning of whether confirmation has also been administered" (DE/1993 99, a).

Regarding the other ecclesial communities, the difficulties are patent, as articulated in the Ecumenical Directory: "In the present state of our relationships with the ecclesial communities arising from the Reform of the Sixteenth Century, though there is still no agreement regarding the meaning, sacramental nature, not even regarding the administration of the sacrament of Confirmation. Therefore, in the current circumstances, those who would enter into full communion with the Catholic Church coming from said communities, should receive the sacrament of confirmation according to the doctrine and rite of the Catholic Church, before being admitted to Eucharistic communion" (DE/1993 101).

3. *Every baptized person*

Baptism is a necessary requirement of capacity (*only* a baptized person) and at the same time sufficient (*every* baptized person) to validly receive the sacrament of confirmation. Confirmation not only perfects baptismal grace, but it completes the character of baptism and all its purposes. Therefore, it is also a sacrament that imprints character, which means that, besides conferring specific grace when its efficaciousness is not blocked by sin or by lack of faith, it impresses on the soul a spiritual and indelible sign, by virtue of which the confirmed person is more perfectly bound to the Church, and strengthened and urged with greater force to be a witness to Christ, a diffuser and defender of the faith. If there is no will contrary to receiving the sacrament in the case of an adult, and if the sacramental sign has been validly done, the effects inherent to the sacramental character occur objectively, *ex opere operato*, independent of the subjective dispositions of the candidate, including the state of grace or the diverse degree of personal faith, or the different levels of formation and instruction.

Therefore, neither age, nor being in full possession of mental faculties, nor appropriate preparation, constitute exigencies of capacity. Every baptized person whether a newborn infant, a child, or a mentally handicapped person, or a person lacking instruction, is a capable subject, and as such, has a fundamental right to the sacrament, even though the exercise of this right is legally and lawfully limited.

From the forgoing, it follows that the sacramental action can work in principle without the positive mediation of the subject, such as in the case of an infant or a mentally handicapped person. However, that does not mean that the act of the will is always unimportant. It is logical that, when dealing with an adult in possession of his mental faculties, the intention or will, at least virtual, of being confirmed is a requirement for validity. Consequently, every contrary will, as well as a lack of freedom that voids the human act, nullifies the sacramental celebration, as it would nullify a feigned or fraudulent celebration.

II. REQUIREMENTS FOR LICEITY (§ 2)

The norm establishes three requirements that must be present simultaneously in the candidate to receive confirmation: due instruction, correct disposition and capacity to renew the promises of baptism. However, these requirements at the level of canonical liceity, without diminishing their projection onto moral purviews.

However, the norm also provides for exceptional cases in which the general law does not apply. To better understand the reach of the exceptions, one might contrast the rough draft of the 1975 *Schema*, which said: "ut quis licite confirmationem recipiat, nisi agatur de infante in periculo mortis versanti, requiritur usu rationis polleat atque rite sit dispositus et sufficienter instructus."

Two things flow from the literal tenor of this outline: *a)* only the case of the danger of death of an infant was excepted; and *b)* as a consequence, having the use of reason began to form a part of the requirements for liceity. At that time, nothing was said about the capacity to renew one baptismal promises, because another canon of that draft was concerned with executing what was mandated by *Sancrosactum Concilirium* 71: " Ut sacramenti Confirmationis intimo cum tota initiatione christiana conexio eluceat, promissiones baptismi renovent confirmationem recepturi." In the 1977 revision, this draft of the canon disappeared, due to the understanding of the Code Commission that the conciliar criterion was manifested in other canons, specifically in § 2 of c. 889,[1] as well as perhaps because its content was more liturgical than disciplinary.

The notable differences between the 1975 *Schema* and the current c. 889 § 2 are obvious. In light of the precept now in effect, the expressly sanctioned requirements of liceity only operate when there is no danger of death and the candidates possesses the use of reason.

1. *Danger of death*

The present canon does not deal only, as did its rough draft, with the danger of death of an infant, but that of any of Christ's faithful not yet confirmed. For canonical liceity, it is sufficient that a capable subject (a non-confirmed baptized person) not possess a will contrary to the sacrament, if dealing with an adult. Consequently, there would not be required appropriate instruction, nor the capacity to renew the baptismal promises. Likewise, it seems that being *rite dispositus* is not required, because the norm is basically referring to a *canonical* requirement of liceity, not a "theological" requirement such as the *state of* grace, to which the *CIC*/1917 expressly referred. Were it not so, the requirement would need to have been expressly applied to the case of danger of death when the confirmation candidate did not lose consciousness or the use of reason.

In relation to danger of death, the parish priest has especially entrusted to him the function of administering confirmation in that circumstance (cf. c. 530, 2°), for which c. 883, 3° grants him the faculty of being the minister of confirmation.

1. Cf. *Comm.* 3 (1971), p. 203; 4 (1974), p. 36; 5 (1975), p. 31; 10 (1978), p. 82.

2. *The case of infants and of those equivalent to them (cf. c. 99) due to habitual lack of the use of reason*

In principle, pursuant to the current discipline of the Latin Church (see commentary on c. 891), it is not licit to confirm an infant, unless a serious reason, in the judgment of the minister, counsels otherwise. The problem resides in knowing whether adults who habitually lack the use of reason are equivalent to infants in this context. In the *Schema* of 1975, having the use of reason would arise from the requirements of liceity. In the current norm, the use of reason is not a requirement for liceity to be confirmed, but the circumstances in which those established requirements operate. *A sensu contrario*, when that circumstance is not verified, that is, where the faithful adult habitually lacks the use of reason, he does not cease being an active and passive subject for confirmation. As has been wisely written, "it is a matter of recalling that Christian maturity does not coincide with psychological maturity. Certainly, the person and the Christian are a single and united reality; but whereas human maturity follows its natural course, Christian maturity follows a mysterious path because it is primarily the result of the ineffable action of the Holy Spiri … . The sacrament is administered even to infants in danger of death, as well as to the mentally incapacitated, because they are brought to Christian maturity which, as we have already noted, is above all a gift of the Spirit."[2] It would be, in effect, unintelligible if the sacrament of confirmation were to be administered to the "perpetually mentally handicapped" without the primacy of the gift that God grants with the sacrament being emphasized, that is, if one does not depart from the principle that "although [confirmation] necessarily implies the free response of the believer who has the use of reason, it is, before all, a free gift of the saving initiative of God."[3]

The faithful adult who lacks the use of reason is a passive and active subject of the sacrament of confirmation. Therefore, he is authorized to receive the sacrament without needing any personal disposition, and he has at the same time the right to receive it. Another question relates to the exercise of that right at the expense of parents or, in the proper case, guardians, in analogy to the provision of c. 868 § 1,1°, with respect to the baptism of infants. In the case of confirmation, it does not seem that the analogy to c. 868 § 2 fits, according to which an infant in danger of death can be baptized against the will of his parents. It is well known that, in the first works of revision, this criterion was not included. It finally prevailed based on the conception that, in the case of imminent and morally certain death, the necessity of baptism for salvation must take precedence over

2. E. CAPPELLINI, "Il conferimento della Confermazione in ordine alle esigenze teologiche e canoniche," in *Monitor Ecclesiasticus* 115 (1990), p. 131.

3. "Nota de la Comisión Episcopal para la Doctrina de la Fe de la CEe," in *BOCEE* 32 (1991), pp. 159–162.

the rights of parents.[4] This is not the case with the sacrament of confirmation, because in no circumstance can it be administered to an infant or mentally handicapped person against the will of his parents or guardians.

3. *The normal cases*

When exceptional cases do not occur (danger of death and perpetual lack of the use of reason), the confirmation candidate shall be appropriately instructed, rightly disposed, and have the capacity to renew his baptismal promises.

Clearly, these requirements for *liceity* are based in indeterminate concepts: *appropriate* instruction, *correct* or *right* disposition, and the *capacity* to renew the baptismal promises. The determination of these concepts is left to the particular legislator in the so-called "Directories of the sacraments of Christian initiation." It also falls to the pastor charged with preparing, admitting, and administering the sacrament. In either case, it is a matter of discretion that must be exercised with proper flexibility, with pastoral balance, "senza dannoso rigorismo o inacettabile lassismo;"[5] with pastoral justice that goes beyond pure legality. To be just in the administration of the sacraments requires being attentive not only to the letter, but also to the spirit, of the law, which establishes a fundamental right (cf. c. 213). Attention to the person in his unrepeatable individuality, in our case, to the Christian faithful in his extremely personal vocation, is the perspective by which all the institutional activity of the Church is oriented. The person must be the center to which all the institutional actions of human society must gravitate.[6] If the member of the faithful as a person were to be diluted (as sometimes happens[7]) in the confused outline of community matters, it would be difficult to preach the transcendence of the human person in his public or private action in society. In this, the law of the Church must be a paradigm for the law of Countries, as reflected in the classical maxim: *sacramenta propter homines*.[8] Therefore, every juridical regulation of a fundamental right, such as that of c. 889, must be interpreted in light of the principle of justice. Therefore, one should recall that the diocesan bishop is obligated to ensure that confirmation is administered to his subjects who duly and reasonably request it (cf. c. 885 § 1).

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4. Cf. J.M. MARTÍ, "La regulación canónica del bautismo de niños en peligro de muerte," in *Ius Canonicum* 62 (1991), pp. 709–733.

5. E. CAPPELLINI, "Il Conferimento...," cit., p. 131.

6. Cf. JOHN PAUL II, "Discurso en el Simposio Internacional de Derecho Canónico Vaticano, 19-24.IV.1993," in *Ius in vita et in missione Ecclesiae* (Vatican City 1994), p. 1267.

7. M.R. QUINLAN, "Parental Rights and Admission of Children to the sacraments of Initiation," in *Studia Canonica* 25 (1991), pp. 385–401.

8. Cf. T. RINCÓN-PÉREZ, "La justicia pastoral en el ejercicio de la función santificadora de la Iglesia," in *Actas de las XIII Jornadas de la Asociación Española de canonistas* (Salamanca 1993), pp. 85–116.

With respect to capacity to renew baptismal promises, a canon was formulated in the first works of revision which echoed the mandate of *Sacrosanctum Concilium* 71: it was advisable that the intimate connection of the sacrament of confirmation with every Christian initiation be clearly manifested, for which the promises of baptism had to be renewed. Perhaps the predominately liturgical character of the norm counseled for its suppression by c. 842 § 2 and c. 889 § 2, which articulate the conciliar mandate. Apart from the insertion of confirmation in the whole of Christian initiation, the requirement of capacity to renew one's baptismal promises serves, in some way, as a measure for suitable preparation regarding what those baptismal promises will have to become liturgically, except when an adult receives confirmation immediately after baptism (cf. c. 866).[9] In no case is it an exponent of certain erroneous pastoral attitudes that "seem to put the substance of this sacrament (of confirmation) in the personal and free *ratification* that, from his baptism, the candidates make on accepting as their own the faith and baptismal commitments that in their infancy others professed in their place. In this context, the free acceptance of the faith, publicly expressed in confirmation, will rectify the lack of freedom of those who received baptism before they had the use of reason."[10] Those who maintain these opinions, add the Spanish bishops, not only distance themselves from the true nature of the sacrament of confirmation, but also simultaneously invalidate the true sacramental reach of the baptism of children.[11]

9. Cf. *Comm.* 15 (1983), p. 187.
10. Cf. "Nota de la Comisión Episcopal para la Doctrina de la fe ...," cit.
11. Cf. ibid.

890 **Fideles tenentur obligatione hoc sacramentum tempestive recipiendi; curent parentes, animarum pastores, praesertim parochi, ut fideles ad illud recipiendum rite instruantur et opportuno tempore accedant.**

The faithful are bound to receive this sacrament at the proper time. Parents and pastors of souls, especially parish priests, are to see that the faithful are properly instructed to receive the sacrament and come to it at the opportune time.

SOURCES: c. 787; RConf 3

CROSS REFERENCES: cc. 843, 885, 891

COMMENTARY

Tomás Rincón-Pérez

Obligations and rights of the faithful

Certainly, c. 890 only explicitly refers to a series of duties relative to the preparation and reception of confirmation. However, it helps to recall that these duties wane in their binding efficacy, moral or juridical, if the correlative rights to which other legal precepts generally refer are not taken into consideration (see commentary on cc. 213, 843, 885, and 891). An important task of sacramental law is establishing the most suitable norms for the valid and licit preparation for and administration of the sacraments on the part of sacred ministers, as well as the valid, licit, and fruitful reception of the same on the part of the faithful. In this way, sacramental discipline takes as its focus the relationship of ministers and faithful to the sacramental signs.

However, sacramental activity also reflects the relationship of justice between the minister of the sacrament, or the Pastor in general, and the faithful who desire to receive the sacrament. Therefore, an important job of the interpreter of sacramental discipline is to discover that dimension of justice, by facilitating the knowledge and satisfaction of the rights of the faithful.[1]

1. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), pp. 459–602; idem, "Derecho administrativo y relaciones de justicia en la administración de los sacramentos," in *Ius Canonicum* 55 (1988), pp. 59–84; p. MONETA, "Il Diritto ai sacramenti dell'iniziazione cristiana," in *Monitor Ecclesiasticus* 115 (1990), p. 623, with regard to confirmation.

1. *Obligation to receive the sacrament at the proper time*

All the faithful within the legal territory in which the administration of the sacrament is lawful, especially regarding age, are obliged directly to receive the sacrament at the proper time. Persons obligated to see that this occurs are first, parents, and second, pastors of souls, especially parish priests.

In both cases, the obligation is tied to reception of the sacrament "at the opportune time." Christ's faithful have the obligation of receiving this sacrament from the time they reach legal age, not before. Because of this, it is necessary that particular legislators, especially diocesan legislators, let the faithful know the age when they can receive the sacrament, since that is the moment the obligation begins to bind. In addition, this duty must be inculcated in the faithful.

In the case of the danger of the death of a child, the time when the obligation arises is determined by that circumstance. To fulfill that serious obligation, all priests have the faculty of conferring confirmation *ipso iure* (c. 883,3°).

The faithful have the duty of making every effort to receive the sacrament of confirmation, not merely failing to reject it when the occasion arises. In this sense, c. 890 is more positive and more binding than c. 787 of the *CIC*/1917. In effect, the former precept left off from the theological principle of the non-necessity of confirmation, with the necessity of means, to be saved, in spite of which, it was illicit for anyone to reject it when the occasion of receiving it was presented.

In the first *schemata* of revision, including the one sent in 1975 to the consulting organs of the entire Church, the clause regarding non-necessity with the necessity of means for salvation was maintained. In a later revision,[2] attention was paid to the critical observations that had been formulated, and this clause was suppressed. In our judgment, this was not because that theological principle is inaccurate, but because it is not the most suitable approach to the obligation of receiving this sacrament. There are many arguments of a positive character to give a theological basis to this obligation. It is sufficient to recognize that every member of the faithful is called to live the Christian life in plenitude, by following the sacramental itinerary desired by Christ himself. It would not make sense to stop at the beginning of Christian initiation, or to jump from baptism to the Eucharist. It was the will of Christ, upon instituting the sacrament of confirmation, that the strengthening of baptismal grace by the Holy Spirit is channeled sacramentally; that is, that the gift of the Holy Spirit is conferred on a baptized person by a specific sacramental sign.

2. Cf. *Comm.* 10 (1978), p. 82.

Given this general consideration of the positive character of the obligation, it is appropriate to investigate its nature: specifically, whether it is a *moral* obligation, or whether it is also fitting to classify it as *juridical.*

In principle, the generic duty enunciated in the canon is of a moral nature, unless we describe it as *juridical,* for its foundation in legal justice, the fulfillment of the laws of the Church. In any case, the juridical reflections of this duty are more perceptible when the Christian faithful are called to exercise certain functions or assume special responsibilities in ecclesial life for which it is demanded that they have received the sacrament of confirmation. For example, confirmation is required to be a godfather for baptism or confirmation. However, the reception of confirmation is especially required when a Christian is prepared for or accedes to a new canonical state, such as admission to major seminary (c. 241 § 2) or the novitiate (c. 645 § 1). If possible without serious difficulty, for, in any case, the *ius connubii* prevails, before marriage, the parties must receive the sacrament of confirmation (c. 1065 § 1). It is an absolute lawful requirement, finally, to receive the sacrament of holy orders (c. 1033); therefore, among the required documents (c. 1050,3°), the certificate of confirmation is required.

The duty of parents with respect to their children, and of pastors of souls (parish priests) with respect to their faithful, to ensure that they receive the sacrament at the opportune time, is clearly not only a moral duty but also a juridical one, since it is correlative to a right of the children and the faithful and, consequently, required in justice. This requirement serves to classify as unjust any failure to fulfill that duty.

2. *The right to receive the sacrament at the proper time*

The obligation of receiving confirmation would not be properly understood if it were not accompanied by a right. It is a fundamental right, generically formalized in c. 213, and later regulated in c. 843. As has been wisely written, all the requirements provided in c. 889, which give a large margin of discretion to the ecclesiastical authority, and the counterweight of the obligations imposed on the faithful and parents and pastors of souls, by c. 890, "demonstrate that there is an interplay between the real and proper right of the faithful to receive confirmation and that power of regulation on the part of the ecclesiastical authority, the latter being strictly construed because the exercise of the right to receive the sacrament reflects individual and communal interests which, as we have already stressed, are inalienable within the ambit of a community with spiritual ends such as the Church."[3]

3. P. MONETA, "Il Diritto ai sacramenti...," cit., p. 624.

Correlative to that right is the duty of justice incumbent on sacred ministers. Therefore, c. 843 § 1 provides: "Sacred ministers may not deny the sacraments to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them." Canon 885 § 1 is expressed in similar terms, referring specifically to confirmation: "The diocesan bishop is bound to ensure that the sacrament of confirmation is conferred upon his subjects who duly and reasonably request it."

As can be seen, the legitimate exercise of that right, as well as the correlative obligation of justice, is subject to a series of prior requirements. Among them are prior preparation and the requirement of age (see commentary on c. 891). But, the case of danger of death must not be forgotten: each of Christ's faithful has the right to have the sacrament administered to him as soon as possible, without unnecessary obstacles, and any priest, who is authorized for this task, has the obligation to administer it diligently. Otherwise, the person would be deprived of a salvific good to which he has a right (not before God, obviously, but before the Church as administrator of those goods), it not mattering that the theological classifications qualify it as an unnecessary good, *with need of means*, for salvation.

3. *Pre-sacramental preparation as a right and as a duty*

Pre-sacramental preparation is a requirement to be permitted to receive the sacrament of confirmation. That makes the generic duty of Christian formation, commonly of a moral nature, into a juridical duty when it concerns pre-sacramental preparation.[4]

Universal law does little more other than enunciate this requirement as an indeterminate duty. This is the case in c. 890, where the duty of confirmation candidates to be suitably instructed implicitly appears, and where the responsibility of parents and pastors of souls to ensure the faithful are properly prepared to receive the sacrament opportunely explicitly appears. Consequently, within the purview of particular norms, principally diocesan norms, is where a specific determination of that juridical duty must be stated, by providing a regimen of suitable and harmonious preparation.

It does not appear difficult to harmonize the two elements that could collide: the right to receive the sacrament opportunely, and the duty of being properly prepared. In effect, once the duty is met, the required preparation, one has the right to receive the sacrament. Otherwise, if proper preparation is missing, exercise of the right is suspended, without breaking any duty of justice, as long as the responsible people have taken the

4. Cf. C.J. ERRÁZURIZ, *"Il munus docendi Ecclesiae" Diritti e Doveri dei fedeli* (Milan 1991), pp. 68–76.

proper means of securing the required preparation. In specific practice, nevertheless, it is important to note that an undue delay in the administration of a sacrament equals an unjust denial, because of the need for the *salus animarum*, since grace dispensed by means of a sacrament works *hic et nunc* and exceeds the caprices of a certain administrator. Care must be taken that the required preparation is not translated into a means by which the rights of the faithful are indirectly unprotected, under an undetermined pretext of safeguarding the *communio* and dignity of the sacrament itself.

Last, it should not be forgotten that dioceses have members of the faithful who are very diverse concerning formation and Christian commitments. This means that the preparation required for the sacraments, specifically for confirmation, is certainly a juridical duty for all faithful, and cannot be measured and applied uniformly to all. Time, content, and the manner of providing formation must be evaluated in each case. In effect, the faithful not only have the duty of being adequately prepared, but they also have the right to receive that preparation according to their personal and familiar status.[5]

5. Cf. T. RINCÓN-PÉREZ, "La salvaguardia de los derechos de los fieles en el proceso de preparación para los sacramentos," in *Fidelium Iura* 3 (1993), pp. 101–135.

891 **Sacramentum confirmationis conferatur fidelibus circa aetatem discretionis, nisi Episcoporum conferentia aliam aetatem determinaverit, aut adsit periculum mortis vel, de iudicio ministri, gravis causa aliud suadeat.**

The sacrament of confirmation is to be conferred on the faithful at about the age of discretion, unless the Bishops' Conference has decided on a different age, or there is a danger of death or, in the judgment of the minister, a grave reason suggests otherwise.

SOURCES: c. 788; CodCom Resp. II, 16 iun. 1931 (*AAS* 23 [1931] 353); SCDS Instr. *Plures petitiones*, 30 iun. 1932 (*AAS* 24 [1932] 271-272); SCDS Instr. *Sacramenti Confirmationis*, 20 maii 1934 (*AAS* 27 [1935] 11-22); SCDS Decr. *Spiritus Sancti Munera*, 14 sep. 1946 (*AAS* 38 [1946] 349-358); *Rituale Romanum*, 1952, tit. III, ch. II; CodCom Resp. 26 mar. 1952 (*AAS* 44 [1952] 496); RConf 11, 12

CROSS REFERENCES: c. 889

COMMENTARY

Tomás Rincón-Pérez

Discipline regarding the age for confirmation

The requirement of age in the Latin Church is tied in discipline to the requirement of appropriate preparation to receive the sacrament of confirmation. Therefore, the *opportune* time to accede to this sacrament will be what the law provides. Since the fixing of age falls in good measure to the particular legislator, pursuant to the provisions of c. 891, the opportune time will be whatever particular law each region might provide, and, in turn, each diocese.

Seen from a strictly canonical or disciplinary angle, the question does not pose special problems: one of Christ's faithful has the right to receive this sacrament at an *opportune* time, but positive law fixes this time. Therefore, if the person administering the sacrament follows the requirement of the canonically set age and does not arbitrarily override it, he undoubtedly fulfills the requirements of legal justice. Consequently, for the member of the faithful who desires to receive confirmation earlier, even for serious reasons, there is no other recourse other than a petition for grace, since the law has temporarily limited the exercise of his right.[1]

1. Cf. T. RINCÓN-PÉREZ, "La justicia pastoral en el ejercicio de la función santificadora de la Iglesia," in *Actas de las XIII Jornadas de la Asociación Española de canonistas* (Salamanca 1993), pp. 85–116.

However, the problem must be observed from a broader perspective or, if preferred, a more fundamental one, which relates to the object of specifying more strictly the limits that would be licit to impose on the exercise of the right to confirmation, by distinguishing them from others that, given the nature of the sacrament, may be illicit. To do so, it is helpful to recall the recent historical evolution of the discipline regarding age in the Latin Church, in contrast to the Eastern Church.

1. *Persistence of the tradition in the Eastern Church*

Pursuant to the recently codified Eastern law, confirmation must be administered jointly with baptism, unless there exists a true need for delay, in which case care must be taken that it is administered as soon as possible (cf. c. 695 § 1 *CCEO*). Therefore, confirmation is administered normatively to newborns, without posing an obstacle to the effects of the sacramental character, that those with the sign of the gift of the Holy Spirit become better witnesses and co-builders of the Kingdom of Christ.

At the heart of this discipline beats, no doubt, the prevalence of the *ex opere operato* regarding the *ex opere operantis*, and the objective consideration of the sacramental character.

In the Eastern discipline, it appears clear that the Eucharist is the height of sacramental initiation. The *CCEO* states: "Sacramental initiation in the mystery of salvation is perfected in the reception of the Divine Eucharist, and thus the Divine Eucharist is administered after baptism and chrismation with holy myron as soon as possible according to the norms of the particular law of the each Church *sui iuris*" (c. 697).

2. *Openness to a new discipline in the Latin Church*

In the discipline of the Latin Church, the *CIC*/1917 determined that the most suitable age for confirmation was approximately seven years old, except in danger of death or when the minister thought it advisable to administer it earlier, based on serious and just reasons. Among the reasons invoked was the contrary lawful custom in Spain and Spanish America, where it was customary to administer confirmation earlier, even immediately after baptism.

In light of the provision of the Code, the Holy See was asked in 1932 if the Spanish custom could continue to be observed, to which the Sacred Congregation of Sacraments answered affirmatively,[2] while observing at

2. Cf. *AAS* 24 (1932), p. 271. Cf. D. TETTAMANZI, "L'età della cresima nella disciplina della Chiesa latina," in *Scuola Cattolica* 195 (1967), pp. 34–61.

the same time the advisability of slowly getting used to the general rule, and so instructing the faithful, as well as the importance of confirmation preceding first communion, thus preserving the logical order of the sacraments of Christian initiation.

It was the 1971 *Ordo Confirmationis* that, at the same time the canonical discipline was ratified, established the possibility of bishops' conferences' introducing a different age for confirmation, such as when the children were older and had received an appropriate formation.

This influenced the revision of the Code, in the first *schemata* of which, including that of 1980, the age of discretion was suppressed as a determinant and principal criterion. It was in the 1981 *Relatio* where a new formula was proposed, which would give rise to c. 891. Pursuant to this formula: "The sacrament of confirmation is regularly conferred when children have attained the age of discretion provided they are properly prepared. Nevertheless, for pastoral reasons, the bishops' conferences are able to determine that the sacrament is conferred at a mature age. Confirmation is conferred on infants in danger of death.

"It is reasonable that Confirmation be administered to children who have reached the age of reason and are found to be adequately prepared, and that therefore the administration of the sacrament should not be delayed, because: a) the Order for Confirmation, Praenotanda III, 11, is to be maintained: 'the entire tradition of the Latin Church affirms that Christian initiation takes place through Baptism and is completed through Confirmation and the Eucharist (unus Pater).'"[3]

In light of this provision, the theoretical possibility of a dual discipline regarding the same subject in the same region or country is clear. However, in practice, pastoral reasons (a more intense preparation) prevail regarding the age of discretion.

A review of the legislation of different bishops' conferences reveals that the general tendency is to situate the most suitable age around twelve and fifteen years, with important differences in the degree of flexibility with which the norms are stated. For example, the Spanish Bishops' Conference situates the age around fourteen years but allows the diocesan bishop the right to follow the common norm of discretion. Other conferences, like Ecuador's, establish the general principle that confirmation will be administered to those who are duly prepared and have sufficient knowledge of Christian doctrine. As a norm, however, it will be administered to those who have followed a complete course of preparation and have reached at least twelve years of age. The French Bishops' Conference situates the age in the period of adolescence, meaning between twelve and eighteen years. Each bishop may establish a specific age, tak-

3. *Comm.* 15 (1983), p. 188.

ing as a reference that broad general margin. The Swiss bishops, for their part, have fixed eleven years as the minimum age.[4]

These examples show how, starting from a common universal discipline, various particular legislators have introduced norms in which a greater or lesser degree of flexibility is reflected, according to whether the exercise of the rights of the faithful is encouraged or made difficult. Starting from the age of discretion, the common norm in the Latin Church, it is doubtless that Christ's faithful favor the exercise of their right to receive confirmation at the opportune time when various possibilities are presented, rather than when an age is fixed without alternatives.

3. *Underlying theological and pastoral problems*

The advisability of postponing the administration of confirmation is usually pastorally justified, appealing to the opportunity for a proper and intense catechesis for adolescents. Undoubtedly, this is a valid argument in principle. History will tell whether it was an efficacious criterion, for it is unclear, from a theological perspective, whether catechesis for adolescents would be more fecund before confirmation, as a preparation for it, or after the youths have been strengthened by the gift of the Holy Spirit. In any case, the adduced pastoral argument is lawful. However, it would not be if it were intended to condition the administration of confirmation on a supposed capacity to assume particular ecclesial commitments derived from the sacrament. In the words of the Spanish bishops, it is positive that the value of preparation stands out, with the condition that it not obscure but highlight "the primacy of the gift that God grants with the sacrament."[5]

Such arguments question fundamental aspects of sacramental theology, such as the working of confirmation *ex opere operato* and its permanent efficaciousness as a sacrament that imprints character, an efficaciousness which is progressively assumable by the confirmed person, to the extent that, by the action of the sacrament, he is maturing in faith. As one can see, the issue lies in making it clear that the sacrament is not received because the person is already an adult in the faith, but precisely in order to become so. Stated in another way: "The words *to confirm*, as the wise liturgist B. Botte demonstrated, are very far from meaning that the baptized person personally confirms that which in his name others have professed; to confirm means that what the Lord himself

4. Cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze episcopali complementare al CIC* (Milan 1990).

5. "Nota de la Comisión Episcopal para la doctrina de la Fe," in *BOCEE* 32 (1991), pp. 159–162.

began in baptism through a ministry he now confirms, and ends, through a new ministerial action of the Bishop."[6]

Moreover, a delay in confirmation is normally justified by asserting environmental de-Christianization and the consequent need for more intense preparation. It is obvious that this is a serious pastoral problem, the solution to which requires an intense re-evangelization and catechization of children and adolescents, who are disconnected in greater or lesser measure from Christian life. But another pastoral problem is the indiscriminate application of that criterion to young people who live in Christian families, thus depriving them of the sacrament at the stage in their lives and in environmental circumstances in which they most need it. Therefore, while it cannot be denied that external difficulties flow from the de-Christianization of society which occasionally make delaying confirmation advisable, there is no lack of occasions where those same difficulties counsel that the child receive the gifts of the Holy Spirit immediately, since they will make him strong in them, without prejudice to a prior preparation suitable to his age, and keeping in mind the Christian climate in which his life unfolds.

The solution to this problem is a difficult task. A possible solution lies in the advisability of making the respective particular law flexible, so that greater leeway is granted to one of Christ's faithful for the exercise of the right to opportunely receive the sacrament of confirmation. The discretionary authority of the diocesan bishop to specify the *appropriate* instruction required before one may receive the sacrament must be exercised with proper pastoral equilibrium (see commentary on c. 889), which goes beyond mere legality. This is confirmed by the CDWDS in a letter to a diocesan bishop which, because of its general interest, the Congregation has made public.[7] The parents of an eleven-year-old girl, who was properly instructed and willing, as the bishop himself acknowledges, appealed to the Congregation their diocesan bishop's denial to their daughter of confirmation because she did not meet the age requirement established in the diocese. The Congregation has responded, in short, that when the requirement of the *appropriate* instruction and the capacity to renew baptismal promises is verified and proven (c. 889), the fundamental right to receive the sacraments prevails over mere legality; that is, said fundamental right is established as a basic criterion for interpreting the law that regulates it.

Finally, doctrine has emphasized that there is a problem that arises from delaying confirmation until the age of fourteen years or more: the inversion of the order of the sacraments of Christian initiation. Pursuant to that order, first communion should not be received without being confirmed. The delay in confirmation establishes, nonetheless, a contrary

6. P. FARNES, "Del bautismo y de la confirmación," in *Phase* 141 (1984), pp. 241–243.
7. Cf. "Notitiae" 35 (1999), pp. 537–540.

practice. Perhaps one day the critical prediction of a well known author will come true: "Today many consider it *an advance* to have delayed confirmation until the age of *commitment*; we think that within several years, perhaps not many, it will be considered theological poverty and decadence that our end of the twentieth century did not know how to grasp the true *initiating* meaning of confirmation situated as a supplement to baptism and the portico to first communion."[8]

8. P. FARNES, "Del bautismo...," cit., p. 242.

CAPUT IV
De patrinis

CHAPTER IV
Sponsors

892 **Confirmando, quantum id fieri potest, adsit patrinus, cuius est curare ut confirmatus tamquam verus Christi testis se gerat obligationesque eidem sacramento inhaerentes fideliter adimpleat.**

As far as possible, the person to be confirmed is to have a sponsor. The sponsor's function is to take care that the person confirmed behaves as a true witness of Christ and faithfully fulfils the duties inherent in this sacrament.

SOURCES: c. 793; SCDS Instr., 25 nov. 1925 (*AAS* 18 [1926] 44-47); *Rituale Romanum,* 1952, tit. III, ch. I; RConf 5

893 **§ 1. Ut quis patrini munere fungatur, condiciones adimpleat oportet, de quibus in can. 874.**

§ 2. Expedit ut tamquam patrinus assumatur qui idem munus in baptismo suscepit.

§ 1. A person who would undertake the office of sponsor must fulfil the conditions mentioned in can. 874.

§ 2. It is desirable that the sponsor chosen be the one who undertook this role at baptism.

SOURCES: § 1: c. 795; RConf 6; *SCDW* Documentorum explanatio (*Notitiae* 11 [1975] 61, 62)
§ 2: c. 796; RConf 5; RCIA 299; *SCDW* Documentorum explanatio (*Notitiae* 11 [1975] 61, 62)

CROSS REFERENCES: cc. 872, 874

COMMENTARY

Tomás Rincón-Pérez

The presence of sponsors, male or female, at confirmation is an extremely old custom, as c. 793 of the *CIC*/1917 acknowledged. When confirmation was conferred immediately after baptism, one sponsor was sufficient. However, when administration of these sacraments was separated, the presence of specific sponsors for confirmation appeared. The Decree of Gratian, for example,[1] reflected that the use of sponsors in confirmation was prescribed, called *sustainers, godfathers*, etc.[2]

In c. 892, the Church echoes that old custom by prescribing the presence of sponsors, both in the liturgical act of confirmation and in the life of the confirmation candidate. In any case, their presence is extremely advisable, but not absolutely necessary; *to the extent possible*, the confirmation candidate should have a sponsor, either male or female. This not only agrees with the fact of physical impossibility, but, more importantly, indicates that the sponsor's function is based on the principle of subsidarity. What obliges them in sponsorship is a function of the parents themselves and only subsidiary to the sponsors. Therefore, their presence is more necessary when the parents are less willing—due to disbelief, indifference or ignorance—to fulfill their task of providing spiritual help to the confirmation candidate.[3]

The function of the sponsor, that is, the *munus* that the law confers, occurs on a dual plane: *a)* in participation in the celebrative act of the sacrament, pursuant to the liturgical books (this concerns the sponsor in the liturgical sense); *b)* in provision of permanent help to the confirmed, so he behaves as a true witness to Christ and faithfully fulfills the obligations that the sacrament imposes, among which are being a propagator and defender of the faith (this concerns the sponsor in the canonical sense).

To guarantee in the best way possible the fulfillment of this important ecclesial function, the law provides a series of requirements for one to be able to be a sponsor. They are the same requirements c. 874 (see commentary) provides for the baptismal sponsor. It is advised (with a criterion distinct from that of c. 796,1° of the *CIC*/1917) that the sponsor for confirmation be the same one for baptism, as a new way of expressing the profound connection of these sacraments of Christian initiation.

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1. D. 4, cc. 100–102, *de cons.*
2. Cf. A. ALONSO LOBO, *Comentarios al Código de Derecho Canónico* (Madrid 1963), p. 183.
3. Cf. G. DAMMACCO, "Missione dei genitori e munus dei padrini," in *Monitor Ecclesiasticus* 115 (1990), pp. 642–645.

Among these requirements, the canonical exigency of being Catholic is prominent, as well as having received all the sacraments of Christian initiation (confirmation and the Eucharist) and leading a life congruent with the faith and the function to be assumed. Despite the pastoral difficulties that this presents, there is nothing more logical than demanding that the person who voluntarily assumes the task of helping the sponsored person be a witness to Christ be himself congruent with the faith and the mission that he will assume.

The condition of being *Catholic* implies that a baptized person who belongs to a non-Catholic ecclesial community cannot be a *sponsor*, although he can be admitted together with a Catholic sponsor and as a Christian witness to baptism. This is what c. 874 § 2 provides, and to which this canon refers. It is important, however, to make several points in light of the discipline that the new Ecumenical Directory establishes.

The general principle is established in these terms (DE/1993 98): "The Catholic concept is that the sponsors (both men and women), in the liturgical and canonical sense, must be themselves members of the Church or of the ecclesial Community where the baptism was celebrated. They not only assume the responsibility of Christian education for the baptized person (or confirmed) as relatives or friends, but they are there also as representatives of the community of faith, guarantors of the faith and of the desire for ecclesial communion of the candidate."

In the two following sections within the same number of the Directory, two exceptions are established, relating to members of non-Catholic Churches and ecclesial communities:

"a) Nevertheless, being based on common baptism, and for ties of family or friendship, a baptized person who belongs to another ecclesial Community can be admitted as a *witness* to a baptism, but only together with a Catholic sponsor. A Catholic can exercise the same role for a person who is going to be baptized in another ecclesial community."

This is the literal case that § 2 of c. 874 contemplates. While one doctrinal sector[4] generalized this provision by extending it to all non-Catholics, even those of the Eastern Churches, the new Directory refers in note 107 to the acts of the Code Commission,[5] where it is stated that the expression *Communitas ecclesialis* does not include Eastern Churches not in full communion with the Catholic Church. For this reason, c. 874 § 2 must be strictly interpreted, and this is what the new directory does:

"b) Because of the close communion existing between the Catholic Church and the Eastern Orthodox Churches, it is permitted for a just reason that an Eastern faithful be admitted as a *sponsor* at the same time that

4. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 487.
5. Cf. *Comm.* 15 (1983), p. 182.

a Catholic sponsor for the baptism of a Catholic child or adult, on the conditions that sufficient provision has been made for the education of the baptized person and that the suitability of the sponsor is recognized."

With this provision, does the new Ecumenical Directory produce an authorized interpretation, or does it modify c. 874 § 2? It should be recalled that a proposal was formulated and rejected in the works of revision, in which it was urged that "this § be divided into two so that the standing of the Eastern faithful and other Christians may be better illuminated, in the following or similar words: §2 A non-Catholic Eastern Christian may be admitted as a sponsor with a Catholic sponsor. §3 Other non-Catholic Christians may be admitted as witnesses of the baptism, but not without being accompanied by a Catholic sponsor.[6]

It is probable that the Ecumenical Directory, which has the Catholics of the universal Church (Latin and Eastern) as intended targets, intends with this provision to extend to the Latin Church the norm of c. 685 § 3 of the Eastern Code.[7] In any case, by following the provisions of the Directory, an Eastern non-Catholic Christian can be not only a *witness* but also a genuine sponsor for baptism and confirmation. In addition, according to the Ecumenical Directory, it is not forbidden for a Catholic to assume "the role of sponsor in a baptism administered in an Eastern Orthodox Church, if he is invited into it. In such case, the obligation of watching out for Christian education corresponds in the first place to the sponsor who is faithful to the Church in which the child is baptized."

6. *Comm.* 13 (1981), pp. 230–231.

7. Cf. P. GEFAELL, "Il nuovo Direttorio ecumenico e la 'communicatio in sacris,'" in *Ius Ecclesiae* 6 (1994), p. 275.

CAPUT V
De collatae confirmationis probatione et adnotatione

CHAPTER V
Proof and Registration of Confirmation

894 **Ad collatam confirmationem probandam serventur praescripta can. 876.**

To establish that confirmation has been conferred, the provisions of can. 876 are to be observed.

SOURCES: *Rituale Romanum*, 1952, tit. III, ch. I

CROSS REFERENCES: cc. 97 § 2, 852 § 1, 875, 876, 891, 892

COMMENTARY

José Bernal

Everything related to sacramental subjects directly concerns the public good of the Church. Indeed, the sacraments confer grace, the fruit of the Redemption, and are the source of salvation, and they give structure to the Church by configuring all of Christ's faithful as the Body of Christ and people of God. On the other hand, for the reception of the sacraments, a series of juridical situations or conditions can be acquired that makes it possible to enjoy certain rights in the ecclesial society. All this is sufficient reason for the interest of the legislator, formed in a series of norms like this canon, to propound the necessary cautions and provisions that make possible, in a reasonable way, the guarantee of proof.[1]

The provisions contained in chap. V, dedicated to the "proof and registration of confirmation," substantially incorporate the regulation of the same subject that the prior Code presented in cc. 798–800. From the first

1. E. TEJERO, commentary on cc. 894–896, in *Pamplona Com.*

works of reform on the Code, the clear intention was to preserve, in a fundamental way, the provisions of the old *Codex*.[2]

The practical importance of proving the reception of the sacrament of baptism, as the door and requirement for validity for the remaining sacraments, is obvious. In the case of confirmation, the importance of proving its reception is less clear. However, it is well known that "because they imprint a character, the sacraments of baptism, confirmation and order cannot be repeated" (c. 845), which makes it obvious that the reception and administration of both sacraments must be stated with certainty.

Moreover, the Code provides that:

— "Before candidates are admitted to the novitiate, they must produce proof of baptism and confirmation" (c. 645 § 1).

— "Only one who has received the sacrament of sacred confirmation may lawfully be promoted to orders" (c. 1033).

— "Catholics who have not yet received the sacrament of confirmation are to receive it before being admitted to marriage, if this can be done without grave inconvenience" (c. 1065).

It would not be logical, nevertheless, were proof of confirmation to be required with the same rigor as that of baptism. As the *CIC*/1917 said, "this sacrament is not necessary with necessity of means for salvation" (c. 787), neither does it pose a requirement of validity on receiving the sacrament of holy orders or on contracting marriage.[3]

This canon specifically refers to testimonial proof. Recourse to it only makes sense when, for some reason, access to the parochial or diocesan archives is not available to request the corresponding certificate, which is the ordinary method of proof. To regulate the exercise of this proof, the legislator refers to c. 876, pursuant to which, to prove the administration of confirmation, as long as it prejudices no one, the declaration of one witness above reproach is sufficient, or the oath of the person himself, if he received the sacrament as an adult. It does not appear that, from the condition of being a confirmed person, no one causes damage to another person, or, at least, it would turn out much less clear than in the case of the sacrament of baptism (see commentary on c. 876).

Therefore, to prove the administration of the sacrament, the declaration of one witness is sufficient. While in no case is the presence of the sponsor necessary to validly celebrate the sacrament of confirmation, the Code states that "as far as possible the person to be confirmed is to have a sponsor" (c. 892). Therefore, this circumstance is the norm. Moreover, it is advisable that the person who exercises this function is "the one who

2. Cf. *Comm.* 3 (1971), p. 205.
3. Cf. A. ALONSO LOBO, *Comentarios al Código de Derecho Canónico* (Madrid 1963), p. 186.

undertook this role at baptism" (c. 893).[4] Obviously, a sponsor shall be above all reproach, as the canon for the witness requires, given that the *CIC* imposes a series of conditions (c. 874 § 1) to ensure his suitability. Therefore, the guarantee of proof will be able to be easily satisfied through the testimony of the sponsor (cf. c. 876 in relation to c. 875).

On the other hand, the Code legitimizes as testimonial proof the declaration of the confirmed person himself, if he received the sacrament as an adult. Given the remission to c. 876, it must be understood that a person who is an adult for the purposes of confirmation is an adult for the purposes of baptism. Pursuant to c. 852 § 1, one who has left infancy and has the use of reason is an adult. Canon 97 § 2 states that one who has completed his seventh year is presumed to have the use of reason. Canon 891 provides that "the sacrament of confirmation is to be conferred on the faithful at about the age of discretion," that is, around seven years.[5] Consequently, every confirmed person, in principle, will be able to testify about reception of the sacrament, except when he received it as an infant, in danger of death or for another serious reason (c. 891).[6]

If the baptized person who received confirmation in an extraordinary case was not an adult, and there was no sponsor present at the celebration, then testimonial proof must be provided by the witness, pursuant to the conditions stated in c. 876.

4. This recommendation was made from the beginning of the work of revision, when the norm of the old c. 796,1° was suspended: cf. *Comm.* 6 (1976), p. 36.

5. At c. 883,2°, reference is made to "one who is no longer an infant," namely an individual more than seven years old (cf. c. 97 §2). Cf. RConf, 11.

6. The CBS has decreed that "the age at which the sacrament of confirmation can be received is around 14, save the right of the diocesan bishop to follow the age of discretion to which c. 891 makes reference": cf. *BOCEE* 3 (1984), p. 102.

895 **Nomina confirmatorum, facta mentione ministri, parentum et patrinorum, loci et diei collatae confirmationis in librum confirmatorum Curiae dioecesanae adnotentur, vel, ubi id praescripserit Episcoporum conferentia aut Episcopus dioecesanus, in librum in archivo paroeciali conservandum; parochus debet de collata confirmatione monere parochum loci baptismi, ut adnotatio fiat in libro baptizatorum, ad normam can. 535 § 2.**

The names of those confirmed, the minister, the parents, the sponsors and the place and date of the confirmation are to be recorded in the confirmation register of the diocesan curia or, wherever this has been prescribed by the Bishops' Conference or by the diocesan Bishop, in the register to be kept in the parochial archive. The parish priest must notify the parish priest of the place of the baptism that the confirmation was conferred, so that it may be recorded in the baptismal register, in accordance with can. 535 § 2.

SOURCES: c. 798; RConf 14

896 **Si parochus loci praesens non fuerit, eundem de collata confirmatione minister per se vel per alium quam primum certiorem faciat.**

If the parish priest of the place was not present, the minister, personally or through someone else, is to notify him as soon as possible that the confirmation was conferred.

SOURCES: c. 799; RConf 15

CROSS REFERENCES: cc. 486-491, 535

COMMENTARY

José Bernal

These canons correspond closely to cc. 798 and 799 of the *CIC*/1917, with two innovations:

— Mention is made of the confirmation register of the diocesan curia. Nevertheless, c. 470 § 3 provided that there be sent "an authentic copy of the parochial registers, except the one concerning the state of souls." This requirement has been suppressed.[1]

— The expression "parochus proprius" has been replaced by "parochus loci."[2]

Pursuant to c. 895, two possibilities exist for recording the celebration of the sacrament of confirmation. The names of the confirmed are inscribed either in the confirmation register of the diocesan curia or, where the bishops' conference or diocesan bishop provides for it, in the confirmation register in the parochial archive.

The *CIC*/1917, in c. 470 § 1, imposed on parish priests the duty of "having the following parochial registers: for baptized persons, for confirmed persons, for marriages, and for dead persons." It also required them "to maintain as assiduously as possible, a register relative to the state of souls." Currently, in universal law, only parochial registers for baptized persons, marriages, and dead persons are required, although the bishops' conference or diocesan bishop may provide for others (cf. c. 535 § 1). Nevertheless, the Code mentions other registers, such as one recording the number of masses that must be celebrated, the intention, the stipend offered, and the fact of their celebration (cf. c. 958 § 1).[3]

In the beginnings of the Code reform efforts, mention continued to be made of the confirmation register and the register referring to the state of souls.[4] In the session of the corresponding *Coetus* of May 9, 1980, the register relative to the state of souls disappeared.[5] The confirmation register is preferred afterwards in the October 1981 plenary session, due to the existence of dioceses without a confirmation register, where annotation is made only in the baptismal register. It is advisable, therefore, that everything relative to that matter be referred to particular law.[6]

Despite the foregoing, it is customary and reasonable that, among those registers that particular legislators will establish, there should be especially recognized those for confirmation and for the state of souls, since they have a fecund tradition.[7] Specifically, the See, in art. 5 of its first General Decree, provided that "the norms in effect up to now, relative to the parochial registers, including the Register-Book of confirmation as it is

1. Cf. J. CALVO, commentary on c. 535, in *Pamplona Com.*
2. Cf. *Comm.* 10 (1978), p. 85.
3. For other examples, cf. F. COCCOPALMERIO, *De paroecia* (Rome 1991), p. 210.
4. Cf. *Comm.* 8 (1976), p. 28; 13 (1981), p. 285.
5. Practically speaking, the argument runs that "il libro sullo stato delle anime si lascia al diritto particolare dato che sono molte le modalità nel farlo e non si può imporre." *Comm.* 13 (1981), p. 286.
6. *Comm.* 14 (1982), p. 226.
7. Cf. F. COCCOPALMERIO, *De paroecia*, cit., p. 211.

utilized in parochial practice" be followed.[8] Therefore, in Spain, the recording of confirmation is in the parochial register, and it does not appear to be stated anywhere that there be a confirmation register in the diocesan curia.

In the confirmation register must be entered the following:

— the name of the confirmed;

— the minister;

— the names of the parents and sponsors;

— the place and date of the ceremony.

It might be useful that, next to the name of the confirmed, a note be made of important facts that might be considered opportune, especially when the parish in which the ceremony was celebrated does not coincide with the parish of baptism.

The obligation to record the reception of the sacrament falls to the parish priest, as the person responsible for parochial activity. Inscription in the register will be done in the parish in which the ceremony was celebrated, and it will correspond to the local parish priest, not to the domiciliary parish priest, as provided in the *CIC*/1917 (cc. 798 and 94).

Moreover, the parish priest administering confirmation must notify the parish priest of the place of baptism, together with the circumstances stated by c. 895, so that it may be recorded in the baptismal register. The CBS required the parish priests to take care "to personally carry out the duty of notification that c. 895 orders." [9] Likewise, facts relative to ordination (cf. c. 535 § 2 and 1054) and marriage (cf. cc. 535 § 2, 1122, and 1123) will be stated in the baptismal register. In this way, the baptismal register can be a genuine general register, in which all changes regarding the status of persons can be noted.[10]

When the local parish priest is present at the administration of confirmation in his parish, the minister who conferred the sacrament will communicate to him, personally or by other means, as soon as possible, the facts of the confirmations administered.

Finally, the necessity that all parochial archives and registers be well maintained must be insisted upon, and the persons who do so must have the necessary training.[11]

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8. *BOCEE* 3 (1984), p. 101. The CBI issued a similar directive on this issue (cf. *Enchiridion della Conferenza Episcopale Italiana*, vol. 3, p. 915, n° 1594).

9. *BOCEE* 3 (1984), p. 101.

10. Cf. A. MOLINA, commentary on c. 895, in A. BENLLOCH (Dir), *Código de Derecho Canónico* (Valencia 1993).

11. A. LONGHITANO, "Gli archivi ecclesiastici," in *Ius Ecclesiae* 4 (1992), p. 662.

TITULUS III
De sanctissima Eucharistia

TITLE III
The Blessed Eucharist

INTRODUCTION

Péter Erdö

I. SYSTEMATIC ASPECTS OF THE TREATMENT OF THE EUCHARIST IN THE CODES OF THE LATIN CHURCH

1. *Internal organization of the norms regarding the Eucharist*

a) *In the CIC*/1917

In the *CIC*/1917 the principal norms on the Eucharist were grouped into two chapters (cc. 802–844 "The Sacrifice of the Mass" and cc. 845–869 "The Sacrament of the Eucharist"), while the canons regarding the reservation and veneration of the Eucharist appeared under another title, in the third part ("De cultu divino") of book III (cc. 1265–1275). In spite of that, the introductory canon of the entire title on the Eucharist stipulated the three features of this sacrament: presence, sacrifice and communion ("continetur, offertur, sumitur", c. 801 *CIC*/1917). In any case, the structural relation between the norms concerned with these aspects was quite different from the system of the present Code.

b) *Theological motives for the organization of the CIC*

The systematic arrangement of the subject in the corresponding title of the *CIC* is a reflection of the theological emphasis indicated by Vatican Council II and by the most recent magisterium. The Council affirms the organic unity between the sacrifice and the Eucharistic banquet, and the active participation of the faithful in the Mass as a consequence of the theological nature of the Eucharist (*SC* 47–48). In the teachings of John Paul II the Eucharist is presented as one sacrament in three aspects: "It is at one and the same time a sacrifice-sacrament, a communion-sacrament, and a presence-sacrament. And, although it is true that the Eucharist always was and must continue to be the most profound revelation of the human brotherhood of Christ's disciples and confessors, it cannot be

treated merely as an 'occasion' for manifesting this brotherhood. When celebrating the sacrament of the body and blood of the Lord, the full magnitude of the divine mystery must be respected, as must the full meaning of this sacramental sign in which Christ is really present and is received, 'the soul is filled with grace and the pledge of future glory is given'. This is the source of the duty to carry out rigorously the liturgical rules and everything that is a manifestation of community worship offered to God Himself" (*RH* 20).

c) *The organization of the CIC*

For these theological reasons, the Code deals with all aspects of the Eucharist under one single title: its first chapter is devoted to the *Eucharistic celebration* which is the sacrifice, of which the communion is part[1] (cc. 899–933). The second chapter covers the *reserve and veneration* of the Eucharist (cc. 934–944), and the third's objective is the *offering* given by the celebration of the Mass (cc. 945–958).

2. *The Eucharist in the organizational structure of the CIC*

a) In the doctrine of Vatican Council II the Eucharist is presented as center and summit for the celebration of all sacraments of the entire Christian life (*AG* 9,2); source and apex of the entire Christian life (*LG* II; cf. c. 897); source and pinnacle of all evangelization to which they are closely united, and around which all of the sacraments, all of the ministries and all works of the apostolate are arranged (*PO* 5,2). The rediscovery of the profound theological dimensions of Eucharistic ecclesiology have produced results of great value. The ecclesial magisterium asserts the importance of the Eucharistic aspect to clarify the theological nature of the unity of the Church. The unity and indivisibility of the Eucharistic body of the Lord comprises the oneness of his mystical body, that is, of the Church which is one and indivisible.[2] Thus, in fact, the Eucharist excludes the assemblies and particular churches from self-sufficiency, or that each group gathered in the name of Christ should have for itself all of the power of the Church (ibid.).[3]

b) Basing themselves on the ecclesiological aspect of the Eucharist, some authors begin the juridico-canonical treatment on the sacraments precisely by this.[4] The structural principle of the Code is different: it

1. Cf. *Comm.* 4 (1972), pp. 51–52.
2. CDF, Litt. *Communionis notio*, May 28, 1992, no. 11, in *AAS* 85 (1993), p. 845.
3. Cf. J. RATZINGER, "Nota teologica," in CB, Dir. *La visita 'ad limina apostolorum'*, June 29, 1988, in *EV*, XI, p. 656–658, nos. 1134–1137.
4. R. AHLERS-L. GEROSA-L. MÜLLER (eds.), *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), pp. 13–25; p. KRÄMER, *Kirchenrecht I. Wort-Sakrament-Charisma* (Stuttgart-Berlin-Cologne 1992), pp. 69–79.

follows the order of the Christian initiation, placing the norms that deal with the Eucharist after those that regulate baptism and confirmation.

II. Principal Post-Conciliar Documents

— SCRit, Decr. *Ecclesiae semper*, March 7, 1965[5];

— Paul VI, Enc. *Mysterium fidei*, September 3, 1965[6];

— SCCouncil, Decl. February 24, 1967[7];

— SPCU, Dir. *Ad totam Ecclesiam*, May 14, 1967[8];

— SCRit, Instr. *Eucharisticum Mysterium*, May 25, 1967[9];

— SCDW, Instr. *Memoriale Domini*, May 29, 1969[10];

— SPCU, Decl. *Dans ces derniers temps*, January 7, 1970[11];

— SCDW, *Institutio generalis Missalis Romani*, March 26, 1970, 2nd ed. typica with variations and integrations: March 27, 1975;

— *SCCong*, Dir. *Ad normam decreti*, April 11, 1971,[12] substituted by the Dir. *Concilium Vaticanum II* (1997);

— SPCU, Instr. *In quibus rerum circumstantiis*, June 1, 1972[13];

— SCDW, Decl. *In celebratione Missae*, August 7, 1972[14];

— *Ordo unctionis infirmorum eorumque pastoralis curae*, December 7, 1972 (Typis polyglottis Vaticanis 1972);

— SCDS, Instr. *Immensae caritatis*, January 1, 1973[15];

— SCDW, Resp. pt., January 31, 1973[16];

— SCDS-*SCCong*, Decr. *Sanctus Pontifex*, May 24, 1973[17];

5. *AAS* 57 (1965), pp. 410–412.
6. Ibid., pp. 753–774.
7. *AAS* 59 (1967), pp. 229–230.
8. Ibid., pp. 574–592.
9. Ibid., pp. 539–573.
10. *AAS* 61 (1969), pp. 541–545.
11. *AAS* 62 (1970), pp. 184–188.
12. *AAS* 64 (1972), pp. 97–176.
13. Ibid., pp. 518–525.
14. Ibid., pp. 561–563.
15. *AAS* 65 (1973), pp. 264–271.
16. In X. Ochoa, *Leges Ecclesiae post Codicem iuris canonici editae*, V (Rome 1980), col. 6454, no. 4168.
17. *AAS* 65 (1973), p. 410.

— SCDW, *De sacra communione et de cultu mysterii Eucharistici extra missam* ("Eucharistiae celebratio"), June 21, 1973 (Typis polyglottis Vaticanis 1973);

— SPCU, Nota *Dopo la pubblicazione*, October 17, 1973[18];

— Paul VI, MP *Firma in traditione*, June 13, 1974[19];

— SCSDW, Litt. circ., March 31, 1977[20];

— SCSDW, Resp. pt., February 22, 1980[21];

— John Paul II, Epist. *Dominicae caenae*, February 24, 1980[22];

— SCSDW, Instr. *Inaestimabile donum*, April 3, 1980[23];

— SCDF, Resp., October 29, 1982, no. II[24];

— SCDF, Epist. *Sacerdotium ministeriale*, August 6, 1983[25];

— SCSDW, Decr. et Variationes *Promulgato Codice*, September 12, 1983[26];

— SCDF, Decl., November 26, 1983[27];

— CPI, Resp., June 26, 1984, no. I[28];

— SCSDW, Notificatio pt., April 3, 1985[29];

— CPI, Resp., February 20, 1987[30];

— SCSDW, Litt. circ. *Paschalis sollemnitatis*, January 16, 1988[31];

— SCSDW, Decl. *Congregatio pro cultu*, March 21, 1988[32];

— CPI, Resp., June 1, 1988[33];

— SCSDW, Dir. *Christi Ecclesia*, June 2, 1988[34];

— CC, Decr. *Mos iugiter*, February 22, 1991.[35]

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18. Ibid., pp. 616–619.
19. *AAS* 66 (1974), pp. 308–311.
20. In X. OCHOA, *Leges...*, cit., V, cols. 7316–7317, no. 4507.
21. Ibid., VI, col. 7902, no. 4759.
22. *AAS* 72 (1980), pp. 113–148.
23. Ibid., pp. 331–343.
24. *AAS* 74 (1982), p. 1298.
25. *AAS* 75 (1983), pp. 1001–1009.
26. In X. OCHOA, *Leges...*, cit., VI, cols. 8669–8676, no. 4997; *Notitiae* 19 (1983), pp. 540–555.
27. *AAS* 76 (1984), p. 300.
28. Ibid., p. 746.
29. In X. OCHOA, *Leges...*, cit., VI, cols. 9122–9123, no. 5116; *Notitiae* 21 (1985), pp. 259–261.
30. *AAS* 79 (1987), p. 1132.
31. In *EV* XI, pp. 12–66, nos. 7–119; *Notitiae* 24 (1988), pp. 81–107.
32. In *EV* XI, pp. 178–183, nos. 243–252; *Notitiae* 24 (1988), pp. 234–236.
33. *AAS* 80 (1988), p. 1373.
34. In *EV* XI, pp. 442–469, nos. 725–764; *Notitiae* 24 (1988), pp. 366–378.
35. *AAS* 83 (1991), pp. 443–446.

897 **Augustissimum Sacramentum est sanctissima Eucharistia, in qua ipsemet Christus Dominus continetur, offertur et sumitur, et qua continuo vivit et crescit Ecclesia. Sacrificium eucharisticum, memoriale mortis et resurrectionis Domini, in quo Sacrificium crucis in saecula perpetuatur, totius cultus et vitae christianae est culmen et fons, quo significatur et efficitur unitas populi Dei et corporis Christi aedificatio perficitur. Cetera enim sacramenta et omnia ecclesiastica apostolatus opera cum sanctissima Eucharistia cohaerent et ad eam ordinantur.**

The most august sacrament is the blessed Eucharist, in which Christ the Lord himself is contained, offered and received, and by which the Church continually lives and grows. The eucharistic Sacrifice, the memorial of the death and resurrection of the Lord, in which the Sacrifice of the cross is for ever perpetuated, is the summit and the source of all worship and christian life. By means of it the unity of God's people is signified and brought about, and the building up of the body of Christ is perfected. The other sacraments and all the ecclesiastical works of the apostolate are bound up with, and directed to, the blessed Eucharist.

SOURCES: c. 801; *SC* 10, 47; *LG* 3, 11, 17, 26; PAULUS Pp. VI, Let. Ap. *Investigabiles divitias Christi*, 6 feb. 1965 (*AAS* 57 [1965] 301); *MF* 753, 774; *CD* 30; *AG* 14; *PO* 5; *EMys* 1, 3, 6, 10; GIRM 7; SPCU Instr. *In quibus*, 1 iun. 1972, 2, 3 (*AAS* 64 [1972] 519–522); PAULUS Pp. VI, Exhort. Ap. *Marialis cultus*, 2 feb. 1974, 20 (*AAS* 66 [1974] 131–132); SCCE Instr. *In ecclesiastica futurorum*, 3 iun. 1979, 22; IOANNES PAULUS Pp. II, Let. Ap. *Patres Ecclesiae*, 2 ian. 1980 (*AAS* 72 [1980] 18)

CROSS REFERENCES: cc. 246 § 1, 369, 528 § 2, 608, 844, 898, 899, 908

COMMENTARY

Péter Erdö

1. The first two canons of the title on the Eucharist are devoted to the doctrinal foundations of Eucharistic worship. The present canon, the first of two, summarizes the fundamental theological doctrine of the dignity of the Eucharist and the value and significance of this sacrament.

2. The fundamental theological doctrine concerning the dignity of the Eucharist is summarized in the following points:

a) The Eucharist is the *most august* of the sacraments: it is the summit and center of the Christian religion, as already taught by Pius XII (cf. *MD* II/a). It is the source and the apex of all the ministries of the Church (see commentary on the present title, I, 2, a).

b) The three aspects of the Eucharist (sacrifice, communion, presence) are enumerated in this canon in virtually the same words as in c. 801 *CIC*/1917: "ipsemet Christus Dominus continetur, offertur ac sumitur." The order of these three aspects differs from that suggested by conciliar theology, which underlined the importance of the last two elements, that is, sacrifice and communion (see commentary on the present title, I, 1, b). In fact, this title of the *CIC* deals in the first place with the Eucharist as sacrifice and communion and later introduces the norms related to the Eucharistic presence.

c) The *presence* of Christ in the Eucharist signifies that the Lord himself is contained in it "truly, really and substantially" and not only as a sign or effect.[1] Thus, "faith in the actual presence of the Lord naturally leads to the external, and public manifestation of that very faith" (*EMys* 49). Christ is present under the species of bread and wine not only during the celebration but also after it, "for the duration of the Eucharistic species."[2]

3. The significance of the Eucharist *for the life of the Church* defines itself, according to the canon we commented on, in the following points:

a) The Church continually lives and grows by the Eucharist. Thus the Eucharist is for the Church a *constitutive* reality: the Church makes the Eucharist and the Eucharist makes the Church[3] (cf. *CD* 11; c. 369).

b) *Memorial* is a term of worship. It does not point to a simple memory but to the ritual celebration that "commemorates and evokes a past event making it present and operative."[4] The Eucharistic sacrifice is a *memorial* of the death and resurrection of the Lord in which the sacrifice of the cross is perpetuated. Christ's sacrifice is unique (Heb 9, 12) "it is not only applied in its fruits, but becomes present and perpetuates itself sacramentally, by virtue of the rite established by Christ in the last supper."[5]

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1. Council of Trent, *Sess.* XIII, c. 1: Dz.-Sch., 1651.
2. Cf. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), p. 81; M. GESTEIRA GARZA, *La Eucaristía, misterio de comunión* (Madrid 1983), pp. 524–575.
3. Cf. H. DE LUBAC, *Meditación sobre la Iglesia* (Bilbao 1959), p. 141; T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 497.
4. Cf. S. DE GIORGI, "L'Eucaristia: vita e missione della Chiesa," in *Monitor Ecclesiasticus* 115 (1990), p. 147.
5. J. MANZANARES, "L'Eucaristia," cit., p. 80.

c) The Eucharistic sacrifice is the *summit and the source* of all worship and all Christian life (vide commentary on this title, I, 2, a). For this reason this canon also adds that the other sacraments and all works of the apostolate are closely bound with and directed to the Holy Eucharist.

d) With the Eucharist the *unity of the people of God is expressed and realized* once the edification of the body of Christ is accomplished (cf. 1 Cor 10, 17). For this reason the ecclesiastic communion manifests and realizes itself in a most complete way in the Eucharist, the sacrament of the unity of the Church. Communication about sacred things with Christian brothers and sisters who are separated (the non-eastern, above all) is limited primarily for this reason. In regards to this, the Second Vatican Council teaches: "worship in common is not to be considered as a means to be used indiscriminately for the restoration of unity among Christians. There are two main principles upon which the practice of such common worship depends: first, that of the unity of the Church which ought to be expressed; and second, that of the sharing in the means of grace. The expression of unity very generally forbids common worship. Grace to be obtained sometimes commends it" (*UR* 8/d).

From this, there follows the principle adopted by the Code for such communication (cf. cc. 844 § 1, 908). In fact, according to the *Ecumenical Directory,* the celebration of the sacraments is an act of Christ and the Church and of the celebrating community as well, and it means the unity of the faith in worship and in life. Therefore, when the unity of faith in the sacrament is missing, communication with those who are not in full communion with the Catholic Church is prohibited, especially in the sacraments of Eucharist, penance, and anointing of the sick (DE/1993 129; cf. DE/1967 55).[6] The exceptional cases in which the participation of Christians belonging to other churches or Christian communities is permissible, are enumerated by canon law (c. 844; c. 671 *CCEO*; DE/1993 130–131).

The function of the Eucharist as a sign and source of unity is placed in the context of the full communion of the Church. "Within the full communion of faith, Eucharistic communion constitutes the expression of that communion and, consequently, of the unity of the faithful, and, concurrently, the means of maintaining and reinforcing that unity.

On the other hand, if this is practiced in common by people who are not among themselves in full ecclesiastical communion, the Eucharistic communion cannot express the full unity that the Eucharist represents by its own nature; in this case unity does not exist. Therefore that practice of communion cannot be considered as a means that could be used for moving towards to the full ecclesial communion."[7]

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6. SPCU, Instr. *In quibus rerum circumstantiis*, June 1, 1972, no. 2, in *AAS* 64 (1972), pp. 519–520.
7. SPCU, Note *Dopo la pubblicazione*, October 17, 1973, no. 4, in *AAS* 65 (1973), p. 617.

Notwithstanding the close bond between the *full* ecclesial communion and the Eucharistic communion,[8] that is stressed in an extreme manner by some authors,[9] it is a question of two different realities. The full communion with the Catholic Church "on this earth" is a technical concept in the *CIC* (c. 205) which indicates a communion that is also visible and externally perceptible with the Catholic Church (cf. c. 96).[10] Such a communion is also a juridical reality. Communion through the bonds of the sacraments, which is necessary for the *plena communio*, does not mean that the person must presently be in a state of grace, but that he or she has to accept all the sacraments in the faith ("omniaque media salutis in ea instituta accipiunt": *LG* 14/b).[11] Identification with the Church has, in fact, several dimensions.[12] Possession of sanctifying grace is necessary for a perfect spiritual communion with the Church, but such a profound adhesion has a different significance than that of the full communion described in c. 205.

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8. Cf., e.g., E. TEJERO, "La 'communio sacramentorum' en la doctrina de S. Agustín," in *Revista Española de Derecho Canónico* 47 (1990), pp. 445–480.

9. Cf., e.g., R. AHLERS, "Eucharistie," in R. AHLERS-L. GEROSA-L. MÜLLER (Eds.), *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), p. 25; idem, "Communio Eucharistica-Communio Ecclesiastica. Zur wechselseitigen Immanenz von Eucharistie und Kirche," in R. AHLERS-P. KRÄMER, (Eds.), *Das Bleibende im Wandel. Theologische Beiträge zum Schisma von Marcel Lefebvre* (Paderborn 1990), pp. 87–103; L. GEROSA, *La scomunica è una pena? Saggio per una fondazione teologica del diritto penale canonico* (Fribourg 1984), pp. 264–296.

10. Cf. A. BORRAS, "Appartenance à l'Église, communion ecclésiale et excommunication," in *Nouvelle Revue Théologique* 110 (1988), pp. 808–814; V. DE PAOLIS, "Communio et excommunicatio," in *Periodica* 70 (1981), pp. 271–302.

11. Cf. G. FELICIANI, "Obblighi e diritti di tutti i fedeli cristiani," in *Il fedele cristiano. La condizione giuridica dei battezzati (Il Codice del Vaticano II, 6)* (Bologna 1989), p. 61; J.M. PIÑERO CARRIÓN, *La ley de la Iglesia*, I (Madrid 1985), p. 335; G. GHIRLANDA, *Il diritto nella Chiesa mistero di communione. Compendio di diritto ecclesiale* (Milan-Rome 1990), p. 93, no. 72.

12. Cf. A. BORRAS, "Appartenance...," cit., p. 814.

898 **Christifideles maximo in honore sanctissimam Eucharistiam habeant, actuosam in celebratione augustissimi Sacrificii partem habentes, devotissime et frequenter hoc sacramentum recipientes, atque summa cum adoratione idem colentes; animarum pastores doctrinam de hoc sacramento illustrantes, fideles hanc obligationem sedulo edoceant.**

Christ's faithful are to hold the blessed Eucharist in the highest honour. They should take an active part in the celebration of the most august Sacrifice; they should receive the sacrament with great devotion and frequently, and should reverence it with the greatest adoration. In explaining the doctrine of this sacrament, pastors of souls are assiduously to instruct the faithful about their obligation in this regard.

SOURCES: c. 863; *SC* 48; *PO* 5; *MF* 754, 755; *EMys* 12, 15

CROSS REFERENCES: cc. 230, 276 § 2,2°, 528 § 2, 663 § 2, 719 § 2, 899 §§ 2–3, 909, 914, 917–923, 934, 936, 937, 940–942, 944, 1247, 1367

COMMENTARY

Péter Erdö

1. The triple aspect of this sacrament demands that the utmost respect and worship due the Eucharist have a triple expression.

a) *Active participation* in the celebration of this most august sacrifice requires the faithful "not be there as strangers or silent spectators. On the contrary, through a good understanding of the rites and prayers they should take part in the sacred action, conscious of what they are doing, with devotion and full collaboration. They should be instructed by God's word, and nourished at the table of the Lord's Body. They should give thanks to God. Offering the immaculate victim, not only through the hands of the priest but also together with him, they should learn to offer themselves" (*SC* 48). An expression of the active participation of all the people may also be the *chant*. For Sunday's celebration the sung Mass is recommended.[1] The general duty of active participation in the celebration of the Mass also confines itself to the functions regulated by c. 230 (cf. c. 910 § 2).

1. SCRit, Instr. *Musicam sacram*, March 5, 1967, nos. 16, 27, in *AAS* 59 (1967), pp. 305, 308; *EMys* 26.

The *minimum frequency of participation* in the Eucharistic celebration is established in c. 1247, which obligates the faithful to participate in the Sunday Mass and other prescribed festivities. Clergymen and members of religious orders, as well as members of lay institutes, are invited to daily participation (or celebration; cc. 276 § 2,2°, 663 § 2, 719 § 2).

b) *Devout and frequent communion* is the dutiful response of the faithful to the reality of the Eucharistic sacrament communion. The act of receiving the Eucharist *during Mass* becomes a more perfect participation in the same sacrifice.[2]

Devout communion also refers the invitation of c. 909 to the priest to prepare with prayer for celebration of the sacrifice and to thank God after celebrating it.

The *frequency* of communion is not limited (cf. c. 917 with its authentic interpretation). The daily celebration vigorously recommended to the priests (c. 276 § 2,2°) also includes communion. The religious are expressly invited to the communion (c. 663 § 2). All of the faithful, after their initiation to the Eucharist, are obligated to receive holy communion at least once a year (c. 920).

c) The real presence of Christ in this sacrament demands *veneration with utmost adoration.* For the specific obligations and the norms about the reservation and veneration of the Eucharist, see cc. 934–944, with the respective liturgical norms (cf. *EMys* 49–67). Members of religious institutes are invited to worship every day the Lord's presence in the sacrament (c. 663 § 2).

2. *Pastors of souls* must carefully instruct the faithful about these obligations, also explaining to them the doctrine bearing upon this sacrament. This obligation is, on the one hand, of the catechesical type (cf. c. 528 § 2) and on the other, it demands testimony of personal conduct (cf. *SC* 14, 19, 48; c. 276 § 2,2°). It is a special duty of parish priests to strive to have the children accede, duly prepared, to first communion as soon as possible once they have reached the age of reason (cf. c. 914).

2. Cf. *SC* 55; c. 918; *EMys* 12; SCDW, "De sacra communione et de cultu mysterii Eucharistici extra missam" (*Eucharistiae celebratio*), June 21, 1973, no. 13, in *EV* IV, p. 1634, no. 2523.

CAPUT I
De eucharistica celebratione

CHAPTER I
The Celebration of the Eucharist

899 **§ 1. Eucharistica celebratio actio est ipsius Christi et Ecclesiae, in qua Christus Dominus, ministerio sacerdotis, semetipsum, sub speciebus panis et vini substantialiter praesentem, Deo Patri offert atque fidelibus in sua oblatione sociatis se praebet ut cibum spiritualem.**

§ 2. In eucharistica Synaxi populus Dei in unum convocatur, Episcopo aut, sub eius auctoritate, presbytero praeside, personam Christi gerente, atque omnes qui intersunt fideles, sive clerici sive laici, suo quisque modo pro ordinum et liturgicorum munerum diversitate, participando concurrunt.

§ 3. Celebratio eucharistica ita ordinetur, ut omnes participantes exinde plurimos capiant fructus, ad quos obtinendos Christus Dominus Sacrificium eucharisticum instituit.

§ 1. The celebration of the Eucharist is an action of Christ himself and of the Church. In it Christ the Lord, through the ministry of the priest, offers himself, substantially present under the appearances of bread and wine, to God the Father, and gives himself as spiritual nourishment to the faithful who are associated with him in his offering.

§ 2. In the eucharistic assembly the people of God are called together under the presidency of the Bishop or of a priest under his authority, who acts in the person of Christ. All the faithful present, whether clerics or lay people, unite to participate in their own way, according to their various orders and liturgical roles.

§ 3. The eucharistic celebration is to be so ordered that all the participants derive from it the many fruits for which Christ the Lord instituted the eucharistic Sacrifice.

SOURCES: § 1: *PO* 13; *MF* 761, 762; *EMys* 3; GIRM 1, 4
§ 2: *SC* 14, 26, 33; *PO* 5; GIRM 2, 7, 58, 59
§ 3: *SC* 47; GIRM 2

CROSS REFERENCES: cc. 369, 834, 897, 898, 900, 906, 907, 910

COMMENTARY

Péter Erdö

This canon is of a theological nature and is introductory to the subject of the Eucharistic celebration.

1. § 1 reaffirms the *public and social character* (*SC* 27)[1] of the Eucharistic celebration and recapitulates its triple theological aspect.

a) This paragraph offers a quasi-definition of the *Eucharistic celebration.* This expression signifies the Holy Mass, and not the other manifestations of the Eucharistic cult external to the Mass, such as the exposition of the sacrament or the processions (cf. cc. 941–944).

b) The Eucharistic celebration is an *action of Christ and of the Church* (cf. *PO* 13/c). It is Christ who offers himself in it through the ministry of the priest. Christ the Lord is, therefore, the sole principal agent in the Mass, "unique, supreme and eternal priest, sole mediator between God and men"[2] (cf. 1 Tim 2: 5–6; Heb 7: 24–25). The Church is also the subject of the Eucharistic celebration, as it happens in every liturgical action (cf. c. 834). The Church acts as the "hierarchically ordered people of God" (GIRM I, 1; cf. c. 837 § 1). Because of this, no Mass is private, but a celebration of the Church (cf. *EMys* 3/d) and above all of Christ himself. Thus it is possible, although not the ideal, for the priest to celebrate the Mass for a just and reasonable cause, even without participation of the faithful (see commentary on cc. 904, 906). In fact, in the Eucharistic celebration it is not only the priest and the community of those present who pray: the entire Church is in prayer with them, also expressing through the approved liturgical texts its spiritual union.[3]

2. § 2 stresses the fact that the Church, as the *subject of the Eucharistic celebration* together with Christ, its head, acts as a community in its entirety.

1. G. DAMIZIA, commentary on c. 899, in P.V. PINTO (Ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 548.
2. Cf. S. DE GIORGI, "L'Eucaristia: vita e missione della Chiesa," in *Monitor Ecclesiasticus* 115 (1990), p. 154.
3. JOHN PAUL II, Let. *Dominicae cenae*, February 24, 1980, no. 12, in *AAS* 72 (1980), p. 144.

a) In this paragraph the Eucharistic celebration is designated by the Greek term *synaxis*, which means assembly, congregation, reunion. In fact, God's people are summoned to congregate under the presidency of the bishop.[4]

b) The bishop or the priest who is under his authority, while in the celebration, *acts in the person of Christ.*[5] In fact, the priests "endowed with the authority that comes to them from Christ the Head and Shepherd. They are placed—with their ministry—*before the Church* as a visible extension and sacramental symbol of Christ, who also stands before the Church and the world as a permanent and ever new source of salvation, He who is 'the savior of his Body' (Eph 5, 23)" (*PDV* 16). The priest represents the people in the Eucharist only because he acts *in persona Christi* in as much as he is the head of all its members.[6]

c) All of *the faithful who attend take part* in the Eucharistic celebration, not being solely represented by the priest, but "through personal participation, in their own way, as 'they have the right to by virtue of the baptism'"[7] (cf. *SC* 14; see commentary on c. 898: 1, a). The diverse modalities of participation conform in turn to the diversity of the liturgical rites. The communion, the act of listening in common to the word of God, participating in the offering of the sacrifice, in prayers and singing; the gestures and attitudes of the body, bring together the faithful who participate in the Eucharistic celebration (cf. GIRM 620). There may be some special roles of service, those of acolyte, lector, psalmist, cantor, musicians; in particular, the organist, the choir master, as well as others who perform certain functions determined for the order of presbyter (the special minister of the communion, those who carry the missal, the cross, the candles, the bread, the water, the wine, the censer or other than the order of presbyter, such as the commentator, those who greet the faithful at the church entrance or those who pick up the collections in the church) (cf. GIRM 63–73).

3. Paragraph 3 requires that the Eucharistic celebration be ordered in such a way that all of the participants may derive from it the *most abundant fruits* for whose obtention Christ instituted the Eucharistic sacrifice. Because of this, taking into account the circumstances of people and places, it is necessary to choose always with utmost care, from among the modalities proposed by the Church, those that may favor to a greater extent that participation that is for the good of the faithful (cf. GIRM 5). This forces the priest to use the opportunities for creativity granted to him

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4. Cf. S. DE GIORGI, "L'Eucaristia...," cit., p. 155.
5. Cf. Council of Trent, *Sess.* XXII, *Decr. de Missa*, c. 2 (Dz.-Sch., 1743); *LG* 10, 28; c. 900 §1.
6. Cf. *MD* (Dz.-Sch., 3850); GIRM, 10.
7. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), p. 82.

in the liturgical books.[8] But everyone is obligated to participate only according to that role which pertains to him/her. In particular, the Eucharistic prayer must be recited solely by the priest (c. 907).[9]

Finally, it must be emphasized that this sacrifice benefits only those of the faithful who "join Christ's Passion through faith and charity,"[10] and that it benefits them more or less, in the measure of their devotion (cf. *EMys* 12).

8. Ibid., p. 83
9. Cf., e.g., GIRM, 10; SCDW, Instr. *Liturgicae instaurationes*, September 5, 1970, no. 4, in *AAS* 62 (1970), p. 698.
10. ST. THOMAS AQUINAS, *S. Th.*, III, q. 79, a. 7 ad 2.

ART. 1
De sanctissimae Eucharistiae ministro

ART. 1
The Minister of the Blessed Eucharist

900 **§ 1. Minister, qui in persona Christi sacramentum Eucharistiae conficere valet, est solus sacerdos valide ordinatus.**

§ 2. Licite Eucharistiam celebrat sacerdos lege canonica non impeditus, servatis praescriptis canonum qui sequuntur.

§ 1. The only minister who, in the person of Christ, can bring into being the sacrament of the Eucharist is a validly ordained priest.

§ 2. Any priest who is not debarred by canon law may lawfully celebrate the Eucharist, provided the provisions of the following canons are observed.

SOURCES: § 1: c. 802; *LG* 10, 26, 28; *EMys* 42, 43; GIRM 59, 60; SCDF Decl., 15 feb. 1975 (*AAS* 67 [1975] 203–204)

CROSS REFERENCES: cc. 903, 907, 916, 919, 1044, 1331 § 1,1°, § 2,2°; 1332, 1333 § 1,1°, 1334, 1335, 1378 § 2,1°, § 3

COMMENTARY
Péter Erdö

This canon discusses the minister of the *Eucharistic celebration*. The minister of the sacred communion may also be different from the celebrating priest (cf. 910).

1. *Condition for validity*

For the *validity* of the celebration it is absolutely indispensable that the minister of the Eucharistic consecration be a priest (bishop or priest) validly ordained (§ 1).[1] Recently, this truth of faith has been made present on several occasions by the magisterium.[2] Especially clear is the SCDF letter, which states: "Among these powers that Christ has conferred in an exclusive way to the apostles and their successors, stands the power to bring into being Eucharist. Only to the bishops and to the priests ... it is, therefore, reserved the faculty of representing in the Eucharistic mystery what Christ did in the Last Supper."[3]

This disposition of the canon is also protected by a punitive sanction. Whoever, not having been ordained a priest, attempts to celebrate the Mass, is punished with suspension *latae sententiae*, if he is a deacon, or interdiction if he is layperson (c. 1378 § 2,1°; cf. c. 1378 § 3).

2. *Conditions for the licit celebration of the Eucharist*

§ 2 is devoted to the issue of the licitness of the celebration. For a legitimate celebration, in addition to the conditions that are necessary for validity, it is required: *a) that the priest be not impeded by canon law, b)* that the *canonical norms* be respected (e.g., those pertaining to time and place of the celebration, the liturgical norms, etc.: cf. *SC* 22 § 3 ; cc. 901–933). The priest is barred from celebrating the Holy Mass licitly whenever he is affected by an irregularity, by another impediment (c. 1044), or by a canonical penalty to that effect (excommunication: c. 1331 § 1,1° and § 2,1°; interdiction: (c. 1332); certain types of suspension: c. 1333 § 1,1°; cf. 1334 § 2). The prohibition arising from a punitive sanction may, nonetheless, be suspended in some cases (cf. 1335). The celebrant must also be, by explicit disposition of the Code (c. 916) in a state of grace. The state of grave sin impedes the celebration.

The general obligation of observing the liturgical norms has a special weight in regards to the Eucharist.[4] Since the Eucharist is "the greatest gift that, in the order of the grace and of the sacrament, the divine spouse

1. Cf. INNOCENT III, Let. *Eius exemplo*, December 18, 1208 (Dz.-Sch., 794); Lateran Council IV, c. 1 (Dz.-Sch., 802); Council of Trent, *Sess.* XXII, *Decr. de Missa*, c. 2 (Dz.-Sch., 1752).

2. *LG* 10, 17; *PO* 2; *EMys* 42–43; GIRM, 59–60; SCDF, Decl. *Mysterium Ecclesiae*, June 24, 1973, no. 6, in *AAS* 65 (1973), pp. 405–407; SCDF, Decl., February 15, 1975, in *AAS* 67 (1975), pp. 203–204.

3. Let. *Sacerdotium ministeriale*, August 6, 1983, no. III, 4, in *AAS* 75 (1983), pp. 1005–1006.

4. Cf. T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), pp. 448–449.

has delivered" to the Church,[5] the faithful must act with profound responsibility towards that gift." It is necessary to put forth in every place an indispensable effort so that in the pluralism of the Eucharistic cult, foreseen by the Second Vatican Council, the unity of which the Eucharist is sign and cause will manifest itself.

"This function that, given the nature of things, must be watched over by the Apostolic See, ought to be assumed not only by each of the bishops' conferences but by each minister of the Eucharist without exception. Furthermore, each must bear in mind he is responsible for the common good of the entire Church. The *priest as minister*, as celebrant, as he who presides the Eucharistic assembly of all the faithful, must have a special *sense of the common good of the Church* ... He cannot consider himself as a 'proprietor' who can freely dispose of the liturgical text and of the sacred rite as if it were a private good of his own, by giving it a personal and arbitrary style. Such innovation may seem to have a positive effect, or it may even respond more to a subjective piety. Nevertheless, objectively, it is always a treason of that union that must find its own expression precisely in the sacrament of unity."[6]

The Code contemplates a discretional penalty both for a violation of the obligations that are imposed by a canonical penalty (c. 1393) as well as for the illicit practice of the sacerdotal function (c.1384).

The duty of vigilance of the rectors of the churches (cc 562; 903), of the parish priests (c. 528 § 2), of the religious superiors (cc. 611,3°; 619) and above all, of the bishops (cc. 835 § 1; 683) must constitute an additional guarantee of the observance of the conditions that are necessary for the legitimate celebration.

5. JOHN PAUL II, Let. *Dominicae cenae*, February 24, 1980, no. 12, in *AAS* 72 (1980), p. 142.
6. Ibid., p. 144.

901 Integrum est sacerdoti Missam applicare pro quibusvis, tum vivis tum defunctis.

A priest is entitled to offer Mass for anyone, living or dead.

SOURCES: c. 809; SCDF Decr. *Accidit,* 11 iun. 1976 (*AAS* 68 [1976] 621)

CROSS REFERENCES: cc. 199,5°, 945–958, 1185

COMMENTARY

Péter Erdö

1. *Applications of the Mass*

This canon contains a theological principle. The priest *may apply the Mass* for anybody, for the living as well as for the dead. The application of the Mass presupposes the doctrine of the Catholic theology about the various fruits of the Mass. Throughout the history of the liturgy and theology, the conviction that the Mass may favor at the same time a diversity of people in a variety of ways has become widespread.[1] Three kinds of fruits or effects are usually recognized: 1) the holy sacrifice benefits the entire Church (a general fruit); 2) it benefits the celebrating priest himself (a very special fruit); and 3) the Mass may be applied to the specific intentions of the celebrant (a special fruit). The effect of the Mass for those who participate in it used to be placed by the different authors in the first or second category.[2] On the other hand, in the canon we are discussing, it refers to the third category, to the specific application of the so-called special fruit of the Mass.

Additionally, the Mass may be applied for the living or *for the dead* who are the subjects of the temporal penalty of their sins.[3]

1. Cf. J. PASCHER, "Die 'Früchte' der heiligen Messe," in *Christliche Existenz und Erziehung. Frestschrift Steffes* (Münster 1954), p. 51; A. MAYER, *Triebkräfte und Grundlinien der Entstehung des Meßstipendiums* (*Münchener Theologische Studien*, Kan. Abt. 34) (St. Ottilien 1976), pp. 256–262.
2. Cf. R. NAZ, "Honoraires de messes," in *Dictionnaire de Droit Canonique*, V, cols. 1203–1204; A. MAYER, *Triebkräfte...*, cit., pp. 256–262; M. SCHMAUS, *Katholische Dogmatik*, IV/1, 6th ed. (Munich 1964), pp. 489–494.
3. Cf. Council of Trent, *Sess.* XXII, *Decr. de Missa*, ch. 2 and can. 3 (Dz.-Sch., 1743, 1753); *Sess.* XXV, *Decr. de purgatorio* (Dz.-Sch., 1820).

2. *For whom the Mass may be applied*

a) The Mass may be applied for anybody, that is, also for the Catholics in an irregular situation as well as for non-Catholics and for non-Christians, and for those for whom the application has not been asked. The limitations refer to situations in which the application of the Mass constitutes a public (known) event.

b) A funeral Mass may not be celebrated for those who have been excluded from ecclesiastical funerals (cf. c. 1185). It is also possible to apply a Mass for these people, but it must be taken into account that in the canon of the Mass the names of those who at the time of their death were not in full communion with the Catholic Church cannot be mentioned.[4]

c) The application must be "objectively determined" and it must be made before the consecration.[5] The objective determination may also be implicit (i.e., *ad intentionem ordinarii, ad intentionem dantis*), but, as Chiapetta[6] stresses, although the Code says nothing, the application of the Mass for "he who will ask for it but has not yet asked" will not be admitted (cf. c. 825 *CIC*/1917).

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4. Cf. SCDF, Decr. *Accidit in diversis*, June 11, 1976, no. III, in *AAS* 68 (1976), pp. 621–622; cf. also A. MAYER, *Die Eucharistie*, in J. LISTL-H. MÜLLER-H. SCHMITZ, *Handbuch des katolischen Kirchenrechts* (Regensburg 1983), p. 689.

5. Cf. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), p. 88.

6. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, II (Naples 1988), p. 56, no. 3209.

902 Nisi utilitas christifidelium aliud requirat aut suadeat, sacerdotes Eucharistiam concelebrare possunt, integra tamen pro singulis libertate manente Eucharistiam individuali modo celebrandi, non vero eo tempore, quo in eadem ecclesia aut oratorio concelebratio habetur.

Unless the benefit of Christ's faithful requires or suggests otherwise, priests may concelebrate the Eucharist; they are, however, fully entitled to celebrate the Eucharist individually, but not while a concelebration is taking place in the same church or oratory.

SOURCES: *SC* 57; SCRit Decr. *Ecclesiae semper*, 7 mar. 1965 (*AAS* 57 [1965] 410–412); *EMys* 47; GIRM 153–158; SCDW Decl. *In celebratione Missae*, 7 aug. 1972 (*AAS* 64 [1972] 561–563)

CROSS REFERENCES: cc. 908, 951 § 2

COMMENTARY

Péter Erdö

1. In the ancient Church ordained priests took part in the celebration of the episcopal Mass in the manner corresponding to their sacred order. With the increase in the number of participants in the Mass, the practice of celebrating the Eucharist in the same church several times on the same day started to become widespread. In the West, concelebration disappeared in the thirteenth century with only vestiges of it remaining (in the episcopal ordination and in the ordination of priests).[1] Canon 803 *CIC*/1917 even prohibited concelebration with the exception of the Masses of episcopal ordination and the ordination of priests.

2. The new discipline has evolved gradually, beginning with the Second Vatican Council (*SC* 57–58):

a) The Council permits concelebration in rather limited notable cases (*SC* 57).

b) The Decree *Ecclesiae semper* of the SCRit (March 7, 1965)[2] *promulgates the rite* of concelebration.

1. Cf. J.A. JUNGMANN, *El sacrificio de la Misa (Missarum Sollemnia)* (Madrid 1963), pp. 230–234, nos. I. 258–260; R. CABIÉ, "L'Eucharistie," in A. MARTIMORT (Ed.), *L'Église en prière. Introduction à la liturgie*, II (Paris 1983), pp. 238–250 (Spanish translation: *La Iglesia en oración. Introducción a la liturgia*, 3rd ed., Barcelona 1987).
2. *AAS* 57 (1965), pp. 410–412.

c) The Instruction *Eucharisticum mysterium* of the same congregation *recommends* concelebration as many times as possible and whenever the utility of the faithful does not advise otherwise (no. 47). The motives for this recommendation are: in the concelebration the unity of the sacrifice and the priesthood is appropriately expressed; and in a singular manner, the unity of the people of God (above all if it is presided over by the bishop, and the faithful take an active part in it) and the fraternity of the presbyters are expressed and consolidated.[3]

d) The GIRM *expands the circumstances* for legitimate concelebration (nos. 76, 153–160).

e) The Declaration of the SCDW *In celebratione Missae*, of August 7, 1972,[4] *broadens the possibilities* for concelebration on the occasion of priestly meetings and in conventual or community Masses.

3. The *existing discipline* no longer limits *the occasions* wherein it is possible to concelebrate. In keeping with the present canon, every priest is directly authorized (without the required permission of the ordinary that was necessary in the different hypotheses of the preceding norms) to concelebrate the Eucharist, provided that he may legitimately celebrate Mass. Thus, all the binated or trinated Masses licitly celebrated may also be concelebrated.[5] The general instruction of the missal has also been modified in the sense of the changes introduced in the *CIC*.[6]

Therefore, presently there is no longer a list of the occasions in which it is permissible to concelebrate, and only those cases in which concelebration is *obligatory* are enumerated (chrism Mass, ordination of priests and bishops) or those in which it is recommended (evening Mass on Holy Thursday; Masses celebrated on the occasion of councils, assemblies of bishops and synods; Masses for the blessing of an Abbot; conventual Masses and principal Masses celebrated in churches and oratories; and Masses celebrated on the occasion of any gathering of priests, secular as well as religious[7]). There is a special recommendation for the concelebration with the bishop himself (GIRM 157). Bination is permitted in certain cases, for the very reason of the concelebration (see commentary on c. 905).

Nonetheless, the general possibility of concelebration depends on two *conditions*:

3. Cf. *EMys* 47; cf. also SCSDW, Resp. pt. X.1975, 1. Dub. no. 1, in X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, V (Rome 1980), col. 7078, no. 4409.

4. *AAS* 64 (1972), pp. 561–563.

5. Cf. J.M. PIÑERO CARRIÓN, *La ley de la Iglesia*, II (Madrid 1986), p. 111; J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), pp. 91–93.

6. SCSDW, Decr. et Variationes *Promulgato Codice*, September 12, 1983, in X. OCHOA, *Leges Ecclesiae...*, cit., VI, cols. 8669–8670, no. 4997; *Notitiae* 19 (1983), pp. 541–542.

7. Cf. ibid.

a) It cannot be concelebrated if the *utility of the faithful* demands or advises otherwise. "In effect, concelebrated Masses reduce the number of Masses celebrated individually for the respective communities, which must not be deprived of the Mass."[8] It would be against the norm to call on priests to concelebrate only for the sake of external decorum,[9] or to concelebrate only in order to receive more donations from the Masses. Any concelebration made for that purpose is excluded: it is prohibited to receive, under any circumstance, compensation for a second Mass which is concelebrated (c. 951 § 2).

b) The *freedom of every priest* to concelebrate must remain without impediment, but not while a concelebration takes place in the same church or oratory.

The present canon contains *no general recommendation for concelebration.* In the *Schema* 1980 that advice still appeared, but the definitive text states only the possibility of it. In the discussion of the *Schema* the main argument against the general recommendation was that it may not have conformed to the intention of the Second Vatican Council, which called only for the expansion of the possibilities for concelebration and did not intend to make a general rule out of the exception, by restricting the Masses celebrated individually (*SC* 57).[10] In opposition to the recommendation that preferred concelebration to the individual celebration of the Mass, it was adduced that only one Mass is celebrated in the concelebration. This is the case even though the unity of priesthood is visibly expressed in concelebration.[11] Since each Mass is constituted autonomously, Christ's sacrifice is renewed in it.[12]

However, it must be pointed out that the *CCEO*, c.700 § 2, makes a general invitation to concelebrate for Eastern Rite presbyters.

6. It is prohibited to concelebrate with priests or ministers who are not in full communion with the Catholic Church (cf. c. 908). With the pastors of the Christian communities where the sacrament of orders is missing, concelebration in a strict sense is not at all possible. The *CIC* does not speak of concelebration with the Catholic priests of different rites. Among Catholic priests of the various Churches of the Eastern Rite "*sui iuris*, the principle of concelebrating for just cause is in effect, with permission from the eparchial bishop to follow all of the prescriptions of the liturgical books of the first celebrant, but preferably conserving the liturgical ornaments and the insignias of the proper Church *sui iuris* (*CCEO* c. 701).

8. M. MORGANTE, *I sacramenti nel Codice di Diritto Canonico. Commento giuridico-pastorale* (Rome 1984), p. 40.
9. Cf. J. MANZANARES, "L'Eucaristia," cit., p. 93; cf. also SCSDW, Resp. pt. X.1975, cit.
10. *Comm.* 15 (1983), p. 191.
11. Cf. SCRit, Decr. *Ecclesiae semper*, March 7, 1965, in *AAS* 57 (1965), p. 411.
12. Cf. T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 504.

It corresponds to the diocesan bishop, within the limits of universal law, to regulate the discipline of the concelebration in his diocese, even in the churches and oratories that are exempt (*SC* 57 § 2,1°; GIRM 155).

8. Certain special liturgical norms must be observed in concelebration (GIRM 153–208). Particularly important among these is the prohibition of allowing other priests to concelebrate a Mass that has already started (GIRM 156).

903 **Sacerdos ad celebrandum admittatur etiamsi rectori ecclesiae sit ignotus, dummodo aut litteras commendatitias sui Ordinarii vel sui Superioris, saltem intra annum datas, exhibeat, aut prudenter existimari possit eundem a celebratione non esse impeditum.**

A priest is to be permitted to celebrate the Eucharist, even if he is not known to the rector of the church, provided either that he presents commendatory letters, not more than a year old, from his own Ordinary or Superior, or that it can be prudently judged that he is not debarred from celebrating.

SOURCES: c. 804 §§ 1 et 2

CROSS REFERENCES: cc. 561, 562, 900

COMMENTARY

Péter Erdö

1. To celebrate the Eucharist in a church the (explicit or tacit) permission of the church's rector or of the competent superior is required (c. 561). The meaning of *rector of the church* in this canon, as seen in other contexts of the *CIC* (cf. cc 764, 1215 § 2; see commentary on c. 556), is the parish priest or any other priest responsible for a church.

2. The rector of the church must allow the priests to celebrate in this church if they are not canonically barred and if they request it reasonably,[1] observing the dispositions of the law, including the liturgical (cf. cc. 900, 562).

3. The present canon sets forth the different procedures by means of which the rector of the church may ascertain that the conditions that obligate him to admit a priest to the celebration are present. Providing that the petition is reasonable and normal, the church's rector must admit the priest: 1) if the person is known to be free of a canonic impediment to celebrate; 2) if the unknown priest presents a commendatory letter (a sacerdotal identity card, a *celebret*) from his ordinary or superior (who generally is also an ordinary: cf. c. 134 § 1), issued at least during the same year; or 3) even if he has not seen the valid *celebret* and does not know the person, it may be judged prudently that nothing prevents that person from

1. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, II (Naples 1988), p. 58, no. 3212.

celebrating (for instance, if the unknown priest has been introduced by a wellknown person; cf. likewise the criteria indicated in c. 804 § 2 *CIC*/1917, concerning ecclesiastical attire and disinterest in monetary matters).

4. The *registry of visits*, that is, the special book in which itinerant priests used to write their names, dioceses and occupation is no longer prescribed by the universal law. However, particular law may also require it at present.

5. The diocesan bishop may establish other modalities for the admission of priests to the celebration (cf. cc. 135 § 2, 381 § 1, 838 §§ 1 and 4, 841). These prescriptions should also be observed[2] in the religious institute's churches, unless they deal with a question of admitting their own members to the celebration in the churches or oratories of the institute.

2. Cf. *Comm.* 15 (1983), p. 192; L. CHIAPPETTA, *Il Codice...*, cit., p. 58, no. 3212.

904 Sacerdotes, memoria semper tenentes in mysterio Sacrificii eucharistici opus redemptionis continuo exerceri, frequenter celebrent; immo enixe commendatur celebratio cotidiana, quae quidem, etiam si praesentia fidelium haberi non possit, actus est Christi et Ecclesiae, in quo peragendo munus suum praecipuum sacerdotes adimplent.

Remembering always that in the mystery of the eucharistic Sacrifice the work of redemption is continually being carried out, priests are to celebrate frequently. Indeed, daily celebration is earnestly recommended, because, even if it should not be possible to have the faithful present, it is an action of Christ and of the Church in the carrying out of which priests fulfil their principal role.

SOURCES: c. 805; *SC* 2, 27; *LG* 3, 28; *AG* 39; *PO* 2, 5, 13; *MF* 761, 762; *EMys* 44; GIRM 4

CROSS REFERENCES: cc. 276 § 2,2°, 899 § 1, 906

COMMENTARY

Péter Erdö

1. The daily celebration of the Eucharist became gradually widespread in the Church. In the time of Saint Augustine there were noticeable signs that daily Mass was accessible to all of the faithful,[1] but the daily celebration by the priests became commonplace slowly in the Latin Church. The pio-benedictine Code still obligated priests to celebrate "several times a year" (*pluries per annum*) (c. 805 *CIC*/1917). According to the commentators this meant at least three or four times.[2] Since then, the thinking and the pastoral situation have changed considerably.

2. According to the present canon, priests must celebrate the Holy Mass *frequently.*

a) The canon—unlike the former Code—no longer speaks expressly of an *obligation.* Since the frequency is not determined, this is a question either of an obligation[3] with a general content not clearly established by

1. Cf. J.A. JUNGMANN, *El sacrificio de la Misa (Missarum Sollemnia)* (Madrid 1963), pp. 283–284, no. I, 303.
2. Cf., e.g., A. VERMEERSCH-I. CREUSEN, Ep*itome iuris canonici*, II, 7th ed. (Mechelen-Rome 1954), p. 43, no. 77.
3. Cf. T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 505.

the law (such a precept resembles in many aspects the recommendation[4]), or—as stated by many authors[5]—only of an exhortation for the reason that it also refers to a frequent celebration. Nonetheless, the invitation has its significance.

b) All of the faithful are obligated to participate in Sunday Mass and other festivities of obligation (c. 1247). Priests must preferably celebrate or concelebrate the Mass "so their participation is fuller and responds truly to their order," and they should not just be content with receiving communion as the laity do.[6] "Therefore, the frequent celebration to which the canon refers means at least a weekly celebration. The maximum recommended celebration is one Mass a day" (cf. c. 905). Celebration of more than one Mass on the same day may be justified by special circumstances, but it is not generally prescribed or recommended (c. 905 § 1).

3. For the same reason, the legislator *insistently recommends* that priests celebrate the Mass *daily.* The same exhortation appears likewise in c. 276 § 2,2°. This recommendation, together with its motivation, goes back to the Second Vatican Council (cf. *PO* 13, 3; *MF* 3; *EMys* 44).

4. As *theological reasons* for the exhortation, the canon points out that in the Eucharistic sacrifice: 1) the work of redemption is realized; and 2) the priest fulfils his principal function (*PO* 13,3). In view of the absolutely central role of the Eucharist for all Church activities (cf. *PO* 5; c. 897; see commentary on the present title: I, 2, a), it may be said that this is the most important function of the priest, not only in the order of the *munus sactificandi,*[7] but in general.

5. The daily celebration is recommended even when *the presence of the faithful cannot be had* (cf. *PO* 13; c. 906). In effect, the celebration of the Eucharist is always an act of Christ and his Church (cf. c. 899 § 1; see commentary on c. 899: 1, b).

6. Celebrating the Eucharist daily or on certain frequent occasions may often become an *obligation* for the priests, not by general law, but by reason of their occupation or their functions (*munera*), by precept of the ordinary or of his superior, or because they may have accepted offerings for the Masses.

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4. Cf. p. ERDÖ, "Expressiones obligationis et exhortationis in Codice Iuris Canonici," in *Periodica* 76 (1987), pp. 21–23, 27.
5. Cf. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), pp. 86–87; J.M. HUELS, commentary on c. 904, in J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHEL, *The Code of Canon Law. A Text and Commentary* (New York-Mahwah 1985), p. 646; A. MAYER, "Die Eucharistie," in J. LISTL-H. MÜLLER-H. SCHMITZ, *Handbuch des katholischen Kirchenrechts* (Regensburg 1983), p. 678.
6. SCDW, Decl. *In celebratione Missae*, August 7, 1972, in *AAS* 64 (1972), p. 561; cf. *EMys*, 48.
7. Cf. J.M. HUELS, commentary on c. 904, cit.

905 **§ 1. Exceptis casibus in quibus ad normam iuris licitum est pluries eadem die Eucharistiam celebrare aut concelebrare, non licet sacerdoti plus semel in die celebrare.**

§ 2. Si sacerdotum penuria habeatur, concedere potest loci Ordinarius ut sacerdotes, iusta de causa, bis in die, immo, necessitate pastorali id postulante, etiam ter in diebus dominicis et festis de praecepto, celebrent.

§ 1. Apart from those cases in which the law allows him to celebrate or concelebrate the Eucharist a number of times on the same day, a priest may not celebrate more than once a day.

§ 2. If there is a scarcity of priests, the local Ordinary may allow priests, for a good reason, to celebrate twice in one day or even, if pastoral need requires it, three times on Sundays or holydays of obligation.

SOURCES: § 1: c. 806 § 1; SCRit Resp., 26 ian. 1920 (*AAS* 12 [1920] 122); SCRit Instr., 12 iun.1921 (*AAS* 13 [1921] 154–155); *SC* 57; *EMys* 47; GIRM 158
§ 2: c. 806 § 2; *PM* 2

CROSS REFERENCES: c. 951

COMMENTARY

Péter Erdö

1. Notwithstanding the legislator's invitation to frequent celebration, the desired frequency also has its limits. Paragraph 1 of this canon sets forth a *general principle* which does not allow the priest to celebrate more than one Mass a day. Exceptions to this norm are possible: 1) as the law provides, or 2) by *concession of the local ordinary.*

2. A *day* is the twenty-four-hour period that is to be reckoned without interruption from midnight on (c. 202 § 1). "The liturgical day extends from one midnight to the following one. But the celebration of Sundays and solemnities commences with vespers of the previous day."[1] The *day* in which the priest may not celebrate more than one Mass must be counted

1. SCRit, Normae *Christi opus*, March 21, 1969, in *EV* III, p. 517, no. 893.

from one midnight to the following.[2] The vigil Mass on Sundays and holy days counts as Mass celebrated on the previous day. Thus, the priest, endowed with the faculty of bination on ferial days and trination on feast days (see *infra* no. 4), may celebrate a ferial Mass on Saturday morning and an anticipated Sunday Mass on Saturday afternoon, and three other Masses on Sunday.[3]

3. By virtue of that which is determined *by the proper law*, a priest may celebrate (or concelebrate) several times a day in the following cases:

a) On November 2, on the commemoration of all the faithful departed, all priests may celebrate three masses, one of which they may apply freely (observing the norm of not receiving more than one Mass offering[4]), another in suffrage for all the deceased faithful, and the third according to the intention of the Roman Pontiff.[5] Although this possibility of trination is not mentioned in the GIRM (no. 158) it is still extant according to the opinion of authors,[6] as from practice, and is also confirmed by particular legislation.[7]

b) On Christmas Day priests may *trinate* (GIRM 158, c) and accept three Mass offerings.[8]

c) On Holy Thursday priests may *binate*, celebrating or concelebrating the evening mass after celebrating or concelebrating the chrism Mass (GIRM 158, a).

d) The priests who have celebrated or concelebrated the Easter Vigil Mass may also *binate*, celebrating another Mass on that day (GIRM 158, b).

e) Whoever has concelebrated with the bishop himself (or if he is a member of a religious order, with the ordinary) or with his delegate on occasion of the Synod, of a pastoral visit or of a sacerdotal meeting of priests

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2. Cf., e.g. K. LÜDICKE, in K. LÜDICKE (Ed.), *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), no. 905/1.
3. Cf. ibid.
4. Cf. CPI, Resp. December 13, 1923, in *AAS* 16 (1924), p. 116.
5. BENEDICT XV, Ap. Const. *Incruentum altaris*, August 10, 1915, in *AAS* 7 (1915), p. 401.
6. J.M. PIÑERO CARRIÓN, *La ley de la Iglesia*, II (Madrid 1986), p. 113; A. MARZOA, commentary on c. 905, in *Pamplona Com*; T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 506, A. MAYER, "Die Eucharistie," in J. LISTL-H. MÜLLER-H. SCHMITZ, *Handbuch des katolischen Kirchenrechts* (Regensburg 1983), p. 678, note 19; L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, II (Naples 1988), p. 59, no. 3215; G. DAMIZIA, commentary on c. 905, in P.V. PINTO (Ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 551; M. MORGANTE, *I sacramenti nel Codice di Diritto Canonico. Commento giuridico-pastorale* (Rome 1984), p. 42; etc.
7. Cf., e.g., CATHOLIC BISHOPS' CONFERENCE OF HUNGARY, *Direktórium. A zsolozsma és a mise rendje a Római Kalendárium szerint az 1991–1992. Liturgikus évre* (Budapest 1991), p. 167.
8. Cf. CPI, Resp. May 29, 1947, in *AAS* 39 (1947), p. 373.

(for example, pastoral meetings, pilgrimages) may celebrate another Mass for the benefit of the faithful (GIRM 158, d[9]).

f) Members of cathedral chapters and of "institutes of perfection" who must celebrate for the benefit of the faithful, may also concelebrate their community Mass on the same day.[10]

The possibilities mentioned on points e) and f) according to a private reply of the SCDW, are valid only for bination, and not for trination.[11] However, some authors consider that this reply, because it was not promulgated, is binding only for the Milan Archdiocese.[12] Even though in the case of this reply it may have been truly just a matter of a particular or singular act, it nevertheless serves as a testimony to the practice of the Holy See (cf. c. 19).

4. In keeping with the tenor of § 2 of the present canon, more than one Mass a day may be celebrated *by concession of the local ordinary* (cf. c. 134 § 2), but the ordinary may grant this faculty only if there is a shortage of priests, and within certain limits established in the same canon: 1) he may allow the celebration of *two Masses* a day, but for that a *just cause* is required (for example, the needs of a community or of a group of the faithful; celebration of weddings or funerals[13]); and 2) he may grant the faculty of celebrating *three Masses*, but only *on Sundays and holy days of obligation* and solely for *pastoral needs*, which are more weighty reasons than merely a *just cause*. These needs may arise if the faithful cannot otherwise participate in the Sunday Mass, for example, because a priest has to attend to three parishes or to several towns with affiliated churches belonging to the same parish, but distant from one another, or because in a large parish the timetable of Masses cannot otherwise be observed because of the illness of one of the priests.[14]

5. In order to grant a wider faculty to priests, the local ordinaries require authorization from the Holy See.[15] In the judgment of illustrious authors, this canon authorizes the ordinaries of the localities to give permission (even general) for bination or trination, but this does not attend to dispensations. For this reason, the diocesan bishops (and not the other ordinaries), even though they cannot give a general license to

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9. Cf. also the interpretation issued by the SCDW, Decl. *In celebratione Missae*, August 7, 1972, no. 2, in *AAS* 64 (1972), p. 562.

10. Ibid., no. 1.

11. SCDW, Resp. part. January 31, 1973, in X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, V (Rome 1980), col. 6454, no. 4168; cf. L. CHIAPPETTA, *Il Codice...*, cit., II, p. 59, no. 3217.

12. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), p. 93, note 68.

13. Cf. L. CHIAPPETTA, *Il Codice...*, cit., II, p. 59, no. 3218; J. MANZANARES, commentary on c. 905, in *Salamanca Com*; A. MARZOA, commentary on c. 905, in *Pamplona Com*; etc.

14. J. MANZANARES, commentary on c. 905, in *Salamanca Com.*

15. Cf. *Comm.* 15 (1983), p. 192.

celebrate a number of Masses greater than the one established in this canon, may grant dispensation from the prohibition of c. 905 § 1 in special cases (cf. c. 87 § 1), thus making possible the licit celebration of more than two Masses on ferial days or of more than three on feast days.[16] These authors naturally assume that the limitation of those cases about which the ordinary may grant the faculty of celebration (*concedere potest*) is not the equivalent of an implicit reserve of the right to dispensation (as it occurs in c. 1127 § 2[17]).

6. Given the pastoral reasons of the law, the tendency to celebrate at any cost more than three times a day does not seem to correspond to the intentions of the legislator. An excessive number of masses celebrated by the same priest or in the same church "does not favor the adequate preparation and celebration of the Eucharist nor the appraisal of other celebrations ... of the Sacrament of Penance, of the Word of God and of practices of piety,"[18] nor does it favor personal meetings with the faithful, and it may also have negative effects on the person of the priest.[19] In situations of extreme scarcity of priests, for which the possibilities indicated in this canon may not be sufficient, participation in the liturgy of the Word is recommended (cf. c. 1248 § 2).

16. Cf. J.M. PIÑERO CARRIÓN, *La ley...*, cit., p. 114; T. RINCÓN, "Disciplina...," cit., p. 506; J. MANZANARES, "L'Eucaristia," cit., p. 96.
17. Cf. CPI, Resp. July 5, 1985, in *AAS* 77 (1985), p. 771.
18. M. MORGANTE, *I sacramenti nel Codice di Diritto Canonico. Commento giuridico-pastorale* (Rome 1984), p. 42.
19. Cf. J. MANZANARES, commentary on c. 905, in *Salamanca Com.*

906 Nisi iusta et rationabili de causa, sacerdos Sacrificium eucharisticum ne celebret sine participatione alicuius saltem fidelis.

A priest may not celebrate the eucharistic Sacrifice without the participation of at least one of the faithful, unless there is a good and reasonable cause for doing so.

SOURCES: c. 813; SCRit Resp. *Dubia,* 4 aug. 1922 (*AAS* 14 [1922] 505); SCDS Instr. *Quam plurimum,* 1 oct. 1949 (*AAS* 41 [1949] 506–508); SCRit Instr. *De musica sacra,* 3 sep. 1958, 14c et 31 (*AAS* 50 [1958] 636, 642); *MF* 761, 762; *SC* 27; GIRM 211

CROSS REFERENCES: cc. 835 § 4, 837 § 2, 899 §§ 2–3, 904

COMMENTARY

Péter Erdö

1. According to the pio-benedictine Code (c. 813 § 1), it was prohibited to celebrate the Mass without the presence of an assistant. The canon we are commenting on no longer speaks of assistants, but establishes that *without the participation of at least one other faithful* the priest may not celebrate the Mass, if there is no just and reasonable cause. Here it is a question of a Mass to which, aside from the priest, no assistant or any other faithful attends.

2. A sufficient cause for this celebration might be that the priest wanted to follow the exhortation to the daily celebration (cf. c. 904).[1] Some maintain that the wish to celebrate daily only justifies the celebration without the participation of any faithful when the priest has attempted with sufficient diligence to find the opportunity to celebrate with the presence of the faithful.[2]

1. Cf. CC, Dir. *Tota Ecclesia,* January 31, 1994, no. 49/a (Vatican City 1994), p. 48; J. MANZANARES, commentary on c. 906, in *Salamanca Com;* A. MARZOA, commentary on c. 906, in *Pamplona Com.*

2. Cf. T. RINCÓN, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico,* 2nd ed. (Pamplona 1991), p. 506.

3. The GIRM (no. 211) permitted the celebration without an assistant only in cases of grave necessity. This norm is no longer in force, as it has been replaced by the disposition of the present canon.[3]

4. The theological reasons for the appropriateness of the participation of at least some faithful is obvious: the Holy Mass is, by its very nature, public and social (*SC* 27); it is structured in the form of dialogue, embodies a communal celebration, and for that reason it is celebrated with participation of the faithful (cf. cc. 835 § 4, 837 § 2, 899 §§ 2–3; see commentary for c. 900, 1).

3. Cf. SCSDW, Decr. et Variationes *Promulgato Codice*, September 12, 1983, in X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, VI (Rome 1980), col. 8670; *Notitiae* 19 (1983), p. 542.

907 In celebratione eucharistica diaconis et laicis non licet orationes, speciatim precem eucharisticam, proferre vel actionibus fungi, quae sacerdotis celebrantis sunt propriae.

In the celebration of the Eucharist, deacons and lay persons are not permitted to say the prayers, especially the eucharistic prayer, nor to perform the actions which are proper to the celebrating priest.

SOURCES: SCRit *Dubia*, 4 aug. 1922 (*AAS* 14 [1922] 505); SCRit Instr. *De musica sacra*, 3 sep. 1958, 14c et 31 (*AAS* 50 [1958] 636, 642); *SC* 28; SCRit Instr. *Musicam sacram*, 5 mar. 1967, 14 (*AAS* 59 [1967] 304); GIRM 10–12; SCDW Instr. *Liturgicae instaurationes*, 5 sep. 1970, 4 (*AAS* 62 [1970] 698); SCDW Litt. circ. *Eucharistiae participationem*, 27 apr. 1973, 8 (*AAS* 65 [1973] 343); ID. Introductio et 4

CROSS REFERENCES: cc. 837 § 1, 899 § 2, 900 § 1, 1378 § 2

COMMENTARY

Péter Erdö

1. This canon applies a general principle of liturgical law: that everyone must participate in liturgical acts, especially in Holy Mass, according to their status, function or office (*SC* 26; cf. cc. 837 § 1, 899 § 2).

2. Therefore, in the Eucharistic celebration, the deacons and the laypersons are not permitted to say the prayers, the Eucharistic prayer in particular, nor to perform the actions that are *proper to the celebrating priest*, for example, giving the blessing. The reason for this norm is that it is the indispensable function of the priest, who is the only minister ontologically capable of celebrating the consecration (cf. 900 § 1; see commentary).

3. Not included among the *prayers* mentioned by the canon are the invocations of the *oratio fidelium* that may be pronounced by lay faithful.[1]

4. The prohibition is reinforced with a penal sanction (cf. c. 1378 § 2,1°).

5. The canon contemplates only the functions of the celebrating priest. But there are also other actions in the Mass that are not strictly reserved to the celebrating priest, but are *proper to the sacred ministers*,

1. Cf. SCSDW, Instr. *Inaestimabile donum*, April 3, 1980, no. 18, in *AAS* 72 (1980), p. 338.

such as the homily (cf. c. 767 § 1) or the distribution of communion (cf. c. 910 § 1). It is possible that there may be laypersons who receive the mandate to perform some functions proper to the ordained persons, for example, to distribute the holy communion (cf. cc. 230 § 3, 910; see commentary on c. 910).

"If they receive a mandate for some of these function, then such an activity of theirs will be materially identical or similar to that of the sacred ministers, but regardless an essential difference will remain, whereby that activity cannot be called sacred ministry. One of the juridical institutions that expresses that difference is the supplemental nature of some of the laypersons' ministries."[2] Because of this it becomes reasonable, for example, that the layperson authorized to distribute communion should abstain from exercising that mandate when—especially in the Mass—priests or deacons who can perform that function are present (see commentary for c. 910, 4).

2. P. ERDÖ, "Elementos de un sistema de las funciones públicas in la Iglesia según el código de Derecho Canónico," in *Ius Canonicum*, 33 (1993), p. 548.

908 **Sacerdotibus catholicis vetitum est una cum sacerdotibus vel ministris Ecclesiarum communitatumve ecclesialium plenam communionem cum Ecclesia catholica non habentium, Eucharistiam concelebrare.**

Catholic priests are forbidden to concelebrate the Eucharist with priests or ministers of Churches or ecclesial communities which are not in full communion with the Catholic Church.

SOURCES: SUCF Decl., 7 ian. 1970 (*AAS* 62 [1970] 184–188)

CROSS REFERENCES: cc. 205, 844

COMMENTARY

Péter Erdö

1. The prohibition about concelebrating Mass with priests or ministers of other churches or ecclesiastical communities is founded in the close relationship existing between the Holy Mass and ecclesial communion (see commentary on cc. 897 and 902). In particular, concelebration constitutes a visible manifestation of the full communion of the faith, in the worship and in the common life of the Catholic Church. For this reason, concelebration of the Eucharist with the ministers of those churches and communities that are not in full communion with the Catholic Church is not permitted (cf. DE/1993 104, e; c. 702 *CCEO*).

2. The violation of this norm is expressed in c. 1365 which provides an indeterminate ("just") penalty in such a case.

3. It should be pointed out that the Eastern Rite Churches that are not in full communion with the Catholic Church could have a more severe discipline in this matter, by reserving not only concelebration, but even the sacramental communion, for their own faithful, to the exclusion of all others (cf. DE/1993 124).

4. The present canon also refers to situations in which Catholic priests may attempt "concelebration" with the "ministers of ecclesiastical communities," that is, with the pastors of Christian communities who do not possess the sacramental priesthood. In such cases an authentic "concelebration" of the Eucharist in the strict sense cannot take place. In fact, those communities, "although we believe that they have not preserved the

proper reality of the Eucharistic mystery in its fullness, especially because of the absence of the sacrament Orders, nevertheless, when they commemorate the Lord's death and resurrection in the Holy Supper, they profess that it signifies life in communion with Christ" (*UR* 22/c).[1] Thus in these cases, the attempts at common ministerial celebration of the Eucharist, as if in concelebration, also fall under the prohibition.

1. SPCU, Decl. *Dans ces derniers temps*, January 7, 1970, no. 4, in *AAS* 62 (1970), p. 185.

909 **Sacerdos ne omittat ad eucharistici Sacrificii celebrationem oratione debite se praeparare, eoque expleto Deo gratias agere.**

A priest is not to omit dutifully to prepare himself by prayer before the celebration of the Eucharist, nor afterwards to omit to make thanksgiving to God.

SOURCES: c. 810; *MD* 566–568; *EMys* 38

CROSS REFERENCES: cc. 276, 898

COMMENTARY

Péter Erdö

1. To facilitate a deeper analysis of the spiritual life of the priest (cf. 276) and to respond to the dignity of the "most august of the sacraments" (cf. cc. 897, 898), priests are encouraged to prepare properly for the Eucharistic sacrifice with prayer, and to thank God after having celebrated it. This invitation, according to several authors, does not constitute a juridical obligation.[1] Other authors, conversely, interpret this ascetical norm as a true juridical obligation.[2]

2. The faithful are also encouraged to give thanks after they have received the sacred communion (cf. *IC* 4).

3. The union with Christ "to which this sacrament itself is directed, is not to be limited to the duration of the Eucharist celebration, but must be prolonged into the entire Christian life, in such a way that the Christian faithful … contemplating unceasingly the gift they have received, may make their life a continual thanksgiving. In order to remain more easily in this thanksgiving which is offered to God in an eminent way in the Mass, those who have been nourished by holy communion should be encouraged to remain for a while in prayer" (*EMys* 38).

4. The examination of conscience is also part of the preparation of the priest, since whoever is conscious of grave sin must not celebrate the Mass without first having sought the sacramental confession, except when

1. Cf. L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, II (Naples 1988), p. 61, no. 3225.
2. Cf. G. DAMIZIA, commentary on c. 909, in P.V. PINTO (ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 552.

there is a serious reason not to go and there is no opportunity for confession. In such a grave situation, the priest is obligated to do an act of perfect contrition, which includes the intention of going to confession as soon as possible (cf. c. 916).

5. The thanksgiving "after" the celebration may also take place during the sacred silence that follows the communion (cf. GIRM 56, j).[3] This form is convenient especially in those places where the conversation of the priest with the faithful customarily takes place after the Mass.

6. Outside of Mass, thanksgiving may also take place in adoration of the most blessed sacrament.[4]

3. Cf. J.M. PIÑERO CARRIÓN, *La ley de la Iglesia*, II (Madrid 1986), p. 114.
4. Cf. CC, Dir. *Tota Ecclesia*, January 31, 1994, no. 50 (Vatican City 1994), pp. 49–50.

910 **§ 1. Minister ordinarius sacrae communionis est Episcopus, presbyter et diaconus.**

§ 2. Extraordinarius sacrae communionis minister est acolythus necnon alius christifidelis ad normam can. 230 § 3 deputatus.

§ 1. The ordinary minister of holy communion is a Bishop, a priest or a deacon.

§ 2. The extraordinary minister of holy communion is an acolyte, or another of Christ's faithful deputed in accordance with Can. 230 § 3.

SOURCES: § 1: cc. 845 §§ 1 et 2, 848, 849; CodCom Resp., 13 iul. 1930, II (*AAS* 22 [1930] 365); *Rituale Romanum*, 1925 et 1952, tit. V; *LG* 29; *EMys* 31; *SDO* 22, 3; HCW 17
§ 2: *MQ* VI; SCDS Instr. *Fidei custos*, 30 apr. 1969; *IC* 1; HCW 17; IOANNES PAULUS Pp. II, Let. *Dominicae cenae*, 24 feb. 1980, 11 (*AAS* 72 [1980] 142); *ID* 10

CROSS REFERENCES: cc. 230 §§ 1 et 3, 1035 § 1

COMMENTARY

Péter Erdö

1. The minister of holy communion is distinguished from the minister of the celebration of the Eucharist, although in general terms the communion is appropriately distributed by the celebrant of the Mass (cf. GIRM 56, i).

2. In addition to the bishops and priests, the deacons are also "ordinary ministers" of the communion (cf. *LG* 29).

3. The acolytes and other lay faithful invested with a special commission (cf. c. 230 § 3) are "extraordinary ministers" of communion. In fact, they can administer holy communion only in those cases in which the ordinary minister is not present or is impeded by another pastoral ministry or by reason of physical incapacity (illness, etc.), or if the communion would be unduly prolonged because of the large number of faithful (cf. *IC* 1).

4. The CPI subsequently specified the significance of the function of the extraordinary ministers of the communion, responding with a "negative" to the following question: "Whether the extraordinary minister of holy communion, deputed in accordance with cc. 910 § 2 and 230 § 3, can exercise his or her supplementary function even when ordinary ministers,

who are not in any way impeded, are present in the Church, though not taking part in the eucharistic celebration"[1] (see commentary on c.907).

5. According to the Instruction *Immensae caritatis* (nos. 1, I–II), the *designation* (*deputatio*) of laypersons (for those special cases, or for a determined period, or, in case of need, even permanently) for the distribution of holy communion, or for partaking of the Eucharistic bread themselves, is the competence *of the local ordinaries*. They are also endowed with the faculty of "allowing those priests who practice the sacred ministry to designate suitable persons who may distribute holy communion in cases of a real need and only in such a circumstance."

6. The selection of the appropriate person is made by taking into account the order indicated in the instruction itself (that may still be modified according to the judgment of the local ordinary): "a reader, a student of a major seminary, a male or female member of a religious order, a catechist, a male or female member of the lay faithful: man or woman." In the oratories of the religious communities this function may be legitimately entrusted to a superior who has not received sacred orders, to the Mother Superior, or to the respective vicars" (*IC* 1, I–IV).

7. Extraordinary ministers—also according to the provisions of particular legislation[2]—may distribute holy communion only in sacred places set aside for divine worship, or in a place where the sick are located (cf. *IC* 1, I).

8. For the designation of the extraordinary ministers of the communion (non-acolytes), no special rite is contemplated. However, there is a recommended rite,[3] published by the SCDC in 1973.

1. CPI, Resp. June 1, 1988, in *AAS* 80 (1988), p. 1373.

2. Cf., e.g., CATHOLIC BISHOPS' CONFERENCE OF HUNGARY, *A világi személyek lelkipásztori tevékenységének szabályzata* (Budapest 1986), p. 5 § 3 (1) a.

3. For the Italian version: "Istituzione dei ministri straordinari della comunione," in *Pontificale Romano* (Rome 1980), pp. 148–150; cf. J. MANZANARES, "L'Eucaristia," in *I sacramenti della Chiesa* (Bologna 1989), p. 98.

911 **§ 1. Officium et ius sanctissimam Eucharistiam per modum Viatici ad infirmos deferendi habent parochus et vicarii paroeciales, cappellani, necnon Superior communitatis in clericalibus institutis religiosis aut societatibus vitae apostolicae quoad omnes in domo versantes.**

§ 2. In casu necessitatis aut de licentia saltem praesumpta parochi, cappellani vel Superioris, cui postea notitiam dari oportet, hoc facere debet quilibet sacerdos vel alius sacrae communionis minister.

§ 1. The duty and right to bring the blessed Eucharist to the sick as Viaticum belongs to the parish priest, to assistant priests, to chaplains and, in respect of all who are in the house, to the community Superior in clerical religious institutes or societies of apostolic life.

§ 2. In a case of necessity, or with the permission at least presumed of the parish priest, chaplain or Superior, who must subsequently be notified, any priest or other minister of holy communion must do this.

SOURCES: § 1: cc. 397,3°, 514 §§ 1–3, 848, 850; CodCom Resp. I, 16 iun. 1931 (*AAS* 23 [1931] 353); RA 29
§ 2: *LG* 29; *SDO* 22, 3; RA 29; *IC* 265

CROSS REFERENCES: cc. 530,3°, 566 § 1, 910, 921

COMMENTARY

Péter Erdő

1. The Eucharist is taken as viaticum to the faithful who are in danger of death (cf. c. 921). The present canon addresses the duties and rights of the various ministers of the sacred communion in this respect.

2. Paragraph 1 considers the ordinary cases and is mindful of the ministers who are normally obligated and authorized to take the viaticum to the faithful. The parish priest, being responsible for the healing of souls, has the duty and the special right (cf. c. 530,3°) to take the viaticum to the sick. The parish vicars (cf. c. 548 § 2), and especially the chaplains who by virtue of their office are invested with the faculty of administering the viaticum and anointing of the sick (cf. c. 566 § 1), have a similar right and duty. The superiors of the communities in the clerical religious institutes and in the clerical societies of apostolic life have that right and that duty towards all persons who reside in the house (cf. c. 619).

3. Paragraph 2 discusses the other ministers of the viaticum. Any priest or any other minister of communion, both ordinary and extraordinary, is authorized and obligated to take viaticum to the faithful: firstly, in case of need, or secondly, by permission, at least presumed, of the parish priest, chaplain, or the competent superior. After the administration of viaticum those ministers must inform the parish priest, the competent superior also in this case. In fact, being responsible for the persons entrusted to them, they must know the situation of the sick.[1]

4. For the application of this canon it is necessary to take into account the principle established by c. 1335 that envisions the suspension of the censures (excommunication, interdict, penal suspension) for pastoral reasons. If a censure bars a minister of the viaticum from administering communion, the prohibition is suspended each time that it may be necessary for assisting those faithful who are in danger of death; if it is a question of an undeclared *latae sententiae* censure, the prohibition is also suspended every time that one of the faithful asks for the sacrament for a justified cause.

5. Because of the notion of the viaticum, which also includes the fact that the faithful may be in danger of death (cf. c. 921), the situation of *necessity* mentioned above occurs whenever the viaticum is justifiably asked for.[2]

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1. Cf. G. DAMIZIA, commentary on c. 911, in P.V. PINTO (ed.), *Commento al Codice di diritto canonico* (Rome 1985), p. 553.
2. Cf. R. AHLERS, commentary on c. 911, in A. BENLLOCH (DIR.), *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones*, 3rd ed. (Valencia 1993).

ART. 2
De sanctissima Eucharistia participanda

ART. 2
Participation in the Blessed Eucharist

912 **Quilibet baptizatus, qui iure non prohibeatur, admitti potest et debet ad sacram communionem.**

Any baptised person who is not forbidden by law may and must be admitted to holy communion.

SOURCES: c. 853

CROSS REFERENCES: cc. 213, 246, 276 §2,2°, 528 §2, 663 §2, 719 §2, 842 §2, 843, 844, 866, 897, 898, 911, §1, 914, 915, 916, 918, 921, 1065 §2

COMMENTARY

Ignatius Gramunt (†)

1. Canon 912 tersely declares the right of any baptized person to receive the Holy Eucharist (*admitti potest*) and the sacred ministers' corresponding duty (*admitti debet*) to administer it to the faithful who rightfully request it. The canon also refers to the legal prohibitions of c. 915 (for the external forum) and of c. 916 (concerning the internal dispositions).

2. Since this right derives from baptism, as indicated in the canon, one can easily see its close relation with that fundamental right of Christ's faithful "to be assisted by their Pastors from the spiritual riches of the Church, especially by the word of God and the sacraments ..." (c. 213). From this right of the faithful derive, in a general way, the corresponding duties of the sacred ministers concerning the preaching of the word of God and the administration of the Holy Eucharist and other sacraments, in accordance with the needs of the faithful.[1]

1. Cf. J. HERVADA, commentary on c. 213, in *Pamplona Com.*

From the relation existing between the two norms (cc. 213 and 912) derive some specific obligations affecting the ecclesiastical offices charged with the care of souls. Thus it is the *parish priest's* duty, for example, "to take care that the blessed Eucharist should be the center of the parish assembly of the faithful" and that "the faithful should be nourished by the devout celebration of the sacraments, and in particular that they should frequently approach the sacraments of the blessed Eucharist ..." (c. 528 §2). It is also the duty of the sacred ministers entrusted with some specific pastoral office "to bring the blessed Eucharist to the sick as viaticum" (cf. c. 911 §1).

If, in addition, we take into account those theological-juridical principles that refer to the need of being spiritually nourished by Eucharistic communion (cf. cc. 276 §2,2°, 842 §2, 897, 898, 914, 921) and those other canons which strongly recommend it (cf. cc. 866, 918, 1065 §2), we can better understand the theological foundation of the positive regulation of both the faithful's right to participate in holy communion and the sacred ministers' corresponding duty to administer it.

The legislator has also chosen to include in the *CIC* the concrete and practical application of this right, and corresponding duty, to some ecclesial communities. For example, c. 246 §1 prescribes that "the celebration of the Eucharist is to be the center of the whole life of the seminary, so that the students, participating in the very charity of Christ, may daily draw strength of soul ... from this richest of sources." With similar words, cc. 663 §2 and 719 §2, urge the religious and the members of secular institutes to participate in the Eucharistic sacrifice daily and to receive the most holy body of Christ.

3. The right of the baptized to receive holy communion is complemented, as the Church teaches, by an obligation and by a counsel. The obligation is found in c. 920, which prescribes the duty to receive holy communion at least once a year, duly "prepared by the sacrament of reconciliation" (*CCC* 1389). This counsel or recommendation comes from the teaching of Vatican II: "The more perfect form of participation in the Mass whereby the faithful, after the priest's communion, receive the Lord's body from the same sacrifice, is strongly commended" (*SC* 55). In the same tenor the *CCC* 1389 states that "the Church strongly encourages the faithful to receive the Holy Eucharist on Sundays and feast days, or more often still, even daily." (see also no. 1418).

4. Given the fact that c. 912 is not specific about the minister before whom the right to receive communion can be exercised and that the canon uses the term "baptised" without further qualification, one should take cognizance of the prescriptions of c. 844 concerning *communicatio in sacris* in a number of distinct situations. These are:

— those conditions when a Catholic can receive communion from a non-Catholic minister (§2);

— situations when Catholic ministers can administer communion to members of the Eastern Churches (or churches associated with it, e.g., the Polish National Catholic Church) not in full communion with the Catholic Church (§3); and

— circumstances when Catholic ministers can administer communion to other Christians not in full communion with the Catholic Church (§4).

For a more complete understanding of these situations, see commentary for c. 844.

913 **§ 1. Ut sanctissima Eucharistia ministrari possit pueris, requiritur ut ipsi sufficienti cognitione et accurata praeparatione gaudeant, ita ut mysterium Christi pro suo captu percipiant et Corpus Domini cum fide et devotione sumere valeant.**

§ 2. Pueris tamen in periculo mortis versantibus sanctissima Eucharistia ministrari potest, si Corpus Christi a communi cibo discernere et communionem reverenter suscipere possint.

§ 1. For holy communion to be administered to children, it is required that they have sufficient knowledge and be carefully prepared, so that according to their capacity they understand what the mystery of Christ means, and are able to receive the Body of the Lord with faith and devotion.

§ 2. The blessed Eucharist may, however, be administered to children in danger of death if they can distinguish the Body of Christ from ordinary food and receive communion with reverence.

SOURCES: §1: c. 854 §§3 et 4; CodCom Resp., 22 feb. 1920; SCDS Instr., 30 iun. 1932 (*AAS* 24 [1932] 272); *PO* 5; *EMys* 14; *GCD* Addendum: De primo accessu ad sacramenta paenitentiae et Eucharistiae (*AAS* 64 [1972] 155); SCDW *Directorium de Missis cum pueris*, 12 (*AAS* 66 [1974] 33–34)

CROSS REFERENCES: cc. 7, 914

COMMENTARY

Ignatius Gramunt (†)

1. By way of introduction, we should bear in mind the presumption *iuris tantum* of c. 97 § 2 whereby a minor is presumed to have the use of reason and to be subject, therefore, to merely ecclesiastical laws on completing the seventh year of age (c. 11). More specifically, the minor must attend Mass on Sundays and other days of obligation (c. 1247) with a form of participation which is more perfect, according to the conciliar recommendation, if the Lord's body is received from the same sacrifice after the priest's communion (*SC* 55; *CCC* 1388–1389).

From those texts, one can deduce the fittingness of starting to prepare the minor for first holy communion with sufficient anticipation so that, if nothing stands against it, children may be able to receive first

communion around their seventh year of age, a time when other norms concerning the Eucharist begin to apply, as already seen.

In fact, this was the criterion of *GCD*, which held that "the appropriate age for receiving these sacraments [Penance and Eucharist] is that customarily named in Church documents as the age of the use of reason or of discretion." According to the same directory, this occurs around the seventh year of age approximately when the child begins to reason and when the obligation to fulfil the precept of confession and communion begins to apply. Consequently, "care should be taken that the time for the precept of confession and communion to start to oblige by itself should not be too far removed from those limits" (*GCD Addendum* 1).[1]

In any case, the *CIC* explicitly indicates that the precept of receiving the blessed Eucharist at least once a year does not begin until a person has received first holy communion (cf. c. 920).

2. In order that the child may effectively be able to exercise the right to receive holy communion and to fulfil the corresponding duty, if that might be the case, the following requirements are needed.

a) In normal circumstances (§ 1):

— to know, in accordance with the child's capacity, the meaning of the "mystery of Christ." This includes first the knowledge that, in Eucharistic communion, one receives the "the Body of the Lord." For the other truths that comprise the "mystery of Christ," the catechetical directives promulgated by the hierarchy should be followed (cf. *CCC* 1382–1405). The *GCD* included the knowledge "of God as our Lord and Father, of his love towards us, of Jesus, the Son of God, who became man for our sake, died and rose again. By considering God's love, the child will gradually understand the evil of sin, which always offends God the Father as well as Jesus and is opposed to the love we should have towards God and toward one's neighbor" (*GCD Addendum* 2). The *CIC*/1917, c. 854 § 3, required the knowledge, adapted to the child's capacity, of the truths needed for salvation with necessity of means.

— to desire "to receive the Body of the Lord with faith and devotion." Although the fulfilment of this requirement will normally follow from the first, it may happen that a child with sufficient knowledge about the "mystery of Christ" may not have the required faith and devotion, a judgment which is to be made by the *parochus* or by some other person responsible for catechizing the child (see commentary on c. 914).

b) In danger of death (§ 2) the minimal requirements are:

— Concerning the knowledge of the "mystery of Christ," it is sufficient for the child to distinguish the body of Christ from common bread.

1. The document cites the Decr. *Quam singulari* of ST. PIUS X, August 8, 1910: *AAS* 2 (1910), p. 582. Cf. A. MARZOA, commentary on c. 913, in *Pamplona Com.*

— Concerning the moral dispositions, the child should be able "to receive the Eucharist with reverence." Since the case is one of danger of death and it refers to children who have hardly crossed the boundary of the moral life, it is presumed that, being able to discern the body of Christ from common bread, the child can "receive Communion with reverence," and that lack of due reverence will have to be shown by a contrary positive fact, that is to say, not by a merely subjective and negative doubt.

914 **Parentum imprimis atque eorum qui parentum locum tenent necnon parochi officium est curandi ut pueri usum rationis assecuti debite praeparentur et quam primum, praemissa sacramentali confessione, hoc divino cibo reficiantur; parochi etiam est advigilare ne ad sacram Synaxim accedant pueri, qui rationis usum non sint adepti aut quos non sufficienter dispositos iudicaverit.**

It is primarily the duty of parents and of those who take their place, as it is the duty of the parish priest, to ensure that children who have reached the use of reason are properly prepared and, having made their sacramental confession, are nourished by this divine food as soon as possible. It is also the duty of the parish priest to see that children who have not reached the use of reason, or whom he has judged to be insufficiently disposed, do not come to holy communion.

SOURCES: c. 854 §§4 et 5; CodCom Resp., 22 feb. 1920; *EMys* 14, 35; *GCD* Addendum: De primo accessu ad sacramenta paenitentiae et Eucharistiae (*AAS* 64 [1972] 155); SCDS et *SCCong* Decl., 24 maii 1973 (*AAS* 65 [1973] 410); SCSDW et *SCCong* Resp., 20 maii 1977 (*AAS* 69 [1977] 427)

CROSS REFERENCES: cc. 97, 773, 774 §2, 777,2°, 913

COMMENTARY

Ignatius Gramunt (†)

1. This canon is addressed, first, to those persons who have the serious obligation to prepare minors for first holy communion. This duty can be fulfilled personally or through teachers, catechists, or instructors prudently entrusted with the preparation of the minor for receiving communion. Relating c. 914 to cc. 773, 774 § 2, and 777,2°, we can determine the following sequence concerning the persons obliged by this duty: *primarily* the parents and those who, in the parents' absence, "take their place";" *subsidiarily*, the godparents and the parish priest (*parochus*).

2. The *special duty of the parish priest* on this matter consists of:

a) making available, by himself or by catechists, the necessary instruction of children for first holy communion (cf. c. 777,2°);

b) ascertaining, by himself or through others, that first holy communion is not permitted to those "children who have not reached the use of reason, or whom he has judged to be insufficiently disposed" (c. 914).

The parish priest should know the diocesan norms, if they exists, concerning the pastoral care of the handicapped (c. 777,4°). If those norms do not exist, the criterion of c. 913 § 2 can be applied, namely, that the person should distinguish between the body of Christ and common bread, and that within the limits of this minimal knowledge, the person may be able to receive communion "with reverence."

3. Although the gravity of this obligation is not mentioned explicitly in the letter of the canon, it can be easily deduced from the canons on catechetical formation of book III, tit. I, chap. 2. Specifically, the first canon of that chapter (c. 773) prescribes that "it is pastors of souls especially who have the serious duty of attending to the catechesis of the christian people, so that ... the faith of the people may be living, manifest, and active." In addition, when c. 774 § 2 prescribes that "before all others, parents are bound to form their children ... in faith and in Christian living" it comes to say that the duty of parents concerning the first communion of their children is also "special and serious." Canon 774 § 2 also adds that "the same obligation binds sponsors and those who take the place of parents."

4. The canon prescribes that in order that children may be rightly prepared (*ut pueri debite praeparentur*), sacramental confession should precede communion (*praemissa sacramentali confessione*). This requirement, implicit only in c. 854 of *CIC*/1917, does not change those principles of moral theology of c. 916 *CIC* whereby a person who is not conscious of grave sin may receive holy communion without having previously been to sacramental confession. The requirement of c. 914 is a juridical-pastoral norm addressed to those persons making the plans or programs for first communion. Those plans should include the instruction of the child regarding the sacrament of penance as the best preparation for receiving the Holy Eucharist. This command implicitly reproves those catechetical plans or programs which, influenced by false arguments of child psychology or by doctrinal errors on sin, postpone first confession to some time after first communion.[1]

In this regard, the teaching of the *CCC* is conclusive when, citing c. 914 explicitly, it states that "children must go to the sacrament of Penance before receiving Holy Communion for the first time" (1457).

5. From all of the above (see also commentaries to cc. 913 and 914) we can delineate the canonical principles that govern the first communion of children as follows.

a) *Age*: the appropriate age for the first communion of children is approximately the seventh year of age, because from that age the child is

1. Cf. ST. PIUS X, Decr. *Quam singularis*, August 8, 1910 (*AAS* 2 [1910] p. 583), which refers to the judgement of parents and confessor about the child's capacity to receive holy communion.

presumed to have sufficient use of reason to benefit from the required instruction;

b) *Requirements* for receiving holy communion lawfully:

— *to know* "the mystery of Christ," according to the child's capacity and, in danger of death, to discern the body of Christ from a bodily food or medicine;

— *to desire* "to receive the body of the Lord with faith and devotion" and, for the child in danger of death, the desire "to receive it with reverence" which can be presumed if the child is able to discern the body of Christ.

c) *Serious obligation of preparing the children*, personally or through others, for first communion. This duty affects the following persons:

— *the parents* and those who take their place;

— *the godparents* when the parents, not fulfilling their duty, are not however opposed;

— *the parish priest* (*parochus*) or those who, in his name, ought to provide for the required preparation or to prevent children insufficiently disposed from receiving holy communion.

d) *Content* of the required preparation:

— *instruction* about the truths included in the "mystery of Christ," adapted to the child's age and capacity;

— *sacramental confession* preceded by its own instruction.

915 Ad sacram communionem ne admittantur excommunicati et interdicti post irrogationem vel declarationem poenae aliique in manifesto gravi peccato obstinate perseverantes.

Those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to holy communion.

SOURCES: c. 855

CROSS REFERENCES: cc. 912, 1331, 1332

COMMENTARY

Ignatius Gramunt (†)

1. *The text of the canon*

The immediate context of c. 915 is formed by cc. 912 and 916. Canon 912 states the right of Christfaithful to participate in the Holy Eucharist, and c. 916 prohibits the exercise of that right to those conscious of grave sin. A baptized Catholic in full ecclesial communion (cf. c. 96) has indeed the right to be nourished with the Eucharist by the Church's pastors (cf. c. 213), and pastors of souls have the duty to care that the faithful are so nourished (cf. c. 528 § 2). This right is, however, not operational when the full communion of charity that the Holy Eucharist signifies and perfects is damaged by grave sin.[1] When the breach of communion with the Lord and with the Church is public because the person's grave sin is notorious, or because the person is under the penalties of excommunication or of interdict (which are publicly imposed or declared *ratione peccati*), c. 915 formulates the prohibition for the external forum. When the breach of ecclesial communion is not public, c. 916 formulates the prohibition for the internal forum.

The present discipline is not substantially different from the discipline under c. 855 of the 1917 Code. [2] It could not be otherwise because this is a norm of divine-positive law traceable to St. Paul's dictum in

1. Vatican II, Apostolic Constitution *Lumen Gentium* 14; Catechism of the Catholic Church, 1395.
2. J.J. MYERS in "Divorce, Remarriage, and the Reception of the Holy Eucharist," *The Jurist* 57 (1997) 485–516.

1 Cor 11:27–29,[3] declared by the Council of Trent in its decree on the Holy Eucharist, received by the 1917 Code, and restated by Vatican II's post-conciliar legislation.[4] The present discipline does in fact simplify the application of the prohibition to the publicly unworthy as stated in the text of c. 712 *CCEO*, which prescribes that *arcendi sunt a susceptione divinae Eucharistiae publice indigni*. This text provides a compact interpretation of c. 915 by gathering in the class of "the publicly unworthy" those persons mentioned in the canon under our consideration.

2. *The subjects of the prohibition*

The prohibition in the external forum is addressed to the minister of holy communion whose duty is to "*not admit*" (*ne admittantur*) those persons mentioned in the canon to the participation in the blessed Eucharist. Subject, then, to this obligation are, according to c. 910, the ordinary minister (bishop, priest, and deacon) and the extraordinary minister (acolyte and those foreseen in c. 230 § 3) when their services are needed. In order to fulfil the obligation to "*not admit*," the minister must indeed make a judgment about the situation and act accordingly. From this it should not be concluded that the decision to "*not admit*" implies an act of jurisdiction. The bishop and the *parochus* celebrating the Eucharist within their jurisdiction may indeed reach that decision by virtue of the juridical power they hold over the congregation, but for those other ministers who lack jurisdiction (including a bishop or a parish priest with no power of governance over that particular congregation), the faculty of administering holy communion is only a liturgical function and, by not admitting, they are simply applying to themselves the prohibition to "*not admit*" to the sacrament a person whom the law excludes.

The minister (whether ordained or not) who must deny communion should do so based on some external and notorious facts affecting the person who seeks holy communion. These facts are: (i) a publicly imposed (for *ferendae sententiae*) or declared (for *latae sententiae*) excommunication or interdict – the competent court or ecclesiastical superior should have exercised the jurisdictional act of sentencing or of declaring the penalty on the person guilty of the crime; and (ii) a grave sin that is obstinate and manifest. Since those facts refer to the external forum, the minister of holy communion should not *publicly* deny communion to a person who,

3. "Whoever, therefore, eats the bread or drinks the cup of the Lord in an unworthy manner will be answerable for the body and blood of the Lord. Examine yourselves, and only then eat of the bread and drink of the cup. For all who eat and drink without discerning the body, eat and drink judgement against themselves."

4. Council of Trent, Session 13, Decretum de SS. Eucharistia, ch. 7 (Dz.-Sch. 1646), c. 11 (Dz.-Sch. 1661); SCDW, Instruction *Eucharisticum mysterium*, 25 May 1967, (*AAS* 59 [1967] 560–561, no. 35); Decree Eucharistiae Sacramentum, 21 June, 1973, (*AAS* 65 [1973] 610, no. 23).

being afflicted by grave sin and/or subject to a non-declared penalty (*latae sententiae*), is not notoriously under those situations. Since the duty to "*not admit*" is clearly formulated in the canon, the minister of communion who, through culpable negligence, unlawfully administers the sacrament against the prescriptions of the canon, with the consequent scandal for the rest of the faithful, can be punished by virtue of c. 1389 § 2, or by invoking c. 1399 which foresees, in a general way, the possibility of punishing those who cause grave scandal by an external violation of divine or ecclesiastical law.[5] In any case, and apart from any possible infliction of a canonical sanction, the observance of this duty on the part of the ministers of holy communion will require, in actual practice, the watchful attention of the diocesan bishop.

3. *Persons not to be admitted*

Following the text of the canon, the following are the persons whom the minister of communion is not to admit to holy communion:

a) those persons subject to excommunication or interdict imposed or declared by a judge or by an ecclesiastical superior after due process. The imposition or the declaration of the penalty brings the breach of ecclesial communion to the external forum, but if the *latae sententiae* penalty is not declared, the person is still barred in conscience (internal forum), in accordance with c. 916, from receiving the sacraments until the censure is lifted by the competent authority or his delegate.

(i) By general law, the following persons should be refused to participate in the Eucharist because of being subject to an excommunication *latae sententiae*, if the penalty has indeed been declared by the competent authority: those guilty of apostasy, heresy, schism (cf. c. 1364 § 1); those guilty of profanation of the consecrated species (cf. c. 1367); a person guilty of physical violence against the Roman Pontiff (cf. c. 1370 § 1); the priest who attempts to absolve the accomplice of a sin against the sixth commandment (cf. c. 1378 § 1); the bishop who confers episcopal ordination to a person without pontifical mandate (cf. c. 1382); the confessor who directly violates the sacramental seal (cf. c. 1388); the person who actually procures an abortion (cf. c. 1398).

The following should be excluded because of being subject to an excommunication *ferendae sententiae* duly imposed by a three-judge tribunal (cf. c. 1425 § 1,2°): a non-ordained person who attempts to celebrate Mass or give sacramental absolution if the penalty is added by the court (cf. c. 1378 § 3); interpreters and others who violate the sacramental seal if the penalty is imposed by the tribunal (c.1388 § 2).

5. A. MARZOA, commentary on c. 915, in *Code of Canon Law Annotated* (Ottawa 1993).

(ii) By general law, the following persons are subject to interdict and should, therefore, be excluded from holy communion: a perpetually professed religious who has attempted marriage (cf. c. 1394 § 2); a non-ordained person who attempts to say Mass or give sacramental absolution (cf. c. 1378 § 2); a person who through simony celebrates or receives a sacrament (cf. c. 1380); a person who falsely denounces a confessor of solicitation (cf. c. 1390 § 1).

Among those to be punished with interdict, c. 1374 explicitly mentions the person who promotes or takes office in "*an association which plots against the Church.*" A declaration of the CDF of November 26, 1984, includes masonic groups within those associations.[6]

b) those persons who "*obstinately persist in manifest grave sin.*" The meaning of this expression is the same as *publice indigni*, or "publicly unworthy," used by c. 712 of the *CCEO* and by c. 855 § 1 of the 1917 Code.[7] Canon 915 under our consideration refers, as explained above, to the external forum, and for this reason the criterion of exclusion should be some sinful lifestyle or situation that is grave as well as public or notorious (*manifesto gravi peccato*) and shows, therefore, the person's breach of full ecclesial communion. The PCILT has authentically interpreted that "obstinate persistence" means "the existence of an objective situation of sin that endures in time and which the will of the individual member of the faithful does not bring to an end, no other requirements (such as an attitude of defiance, prior warning, etc.) being necessary to establish the fundamental gravity of the situation."[8]

The cases mentioned by the canon are not as rare as one would desire. Any pastor of souls can testify of many situations in which poorly instructed Catholics, thoroughly ignorant about the meaning of the Eucharist and obstinate in sinful lifestyles, approach holy communion to the consternation and scandal of the ecclesial community, which is actually torn apart by that objective misuse or abuse (sacrilege) of the sacrament of Church unity.

4. *The situation of the divorced and remarried*

Under the discipline of the 1917 Code, it was clearly understood that the divorced and remarried fell under the prohibition of c. 855. While the new Code was being prepared, John Paul II confirmed the Church's practice, "based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried." The Roman Pontiff

6. CDF, Decl., *Quaesitum est an*, *AAS* 76 (1984), p. 300.
7. J.J. MYERS, ibid. 485–516.
8. PCILT *Declaration on Communion for Divorced and Remarried Persons*, June 24, 2000

explained that the state and condition of life of those persons "objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist." He added that "if these persons were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage." Then, endorsing the pastoral solution proposed by moral theology, the Roman Pontiff stated that "reconciliation in the sacrament of Penance, which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples."[9]

When c. 916 of CodCom was promulgated in 1983, it did not explicitly include the divorced and remarried among those barred from participating in the Holy Eucharist because, as the Commission for the Revision of the Code noted, "certo certius textus respicit etiam divortiatus et renuptiatus."[10] This interpretation, however, was not pacifically held by some authors, and the PCILT issued an authentic interpretation of canon 915 concerning the divorced and remarried in the following terms:

(1) *The prohibition of canon 915 derives from divine law* (cf. 1 Cor 11: 27–29), and no positive ecclesiastical laws can introduce any change opposed to the teaching of the Church. Consequently, "no ecclesiastical authority may dispense the minister of Holy Communion from this obligation in any case, nor may he emanate directives that contradict it." The divine origin of this norm is stressed by the term "unworthy" which, taken from St. Paul's dictum, is used in c. 712 of the *CCEO*: "*Those who are publicly unworthy are forbidden from receiving the Divine Eucharist.*" As explained by the interpretative declaration of the PCILT, "the reception of the Body of Christ when one is publicly unworthy constitutes an objective harm to the ecclesial communion: it is a behavior that affects the rights of the Church and of all the faithful to live in accord with the exigencies of that communion. In the concrete case of the admission to Holy Communion of faithful who are divorced and remarried, the scandal, understood as an action that prompts others towards wrongdoing, affects at the same time both the sacrament of the Eucharist and the indissolubility of marriage."

9. JOHN PAUL II, Apostolic Exhortation *Familiaris consortio*, 22 November 1981, no. 84 *AAS* 74 (1981) 81–191.

10. *Comm.*, 15 (1983), p. 194. This teaching was reiterated in the CCC, 1650, in John Paul II's Apostolic Exhortation *Reconciliatio et Poenitentia*, no. 34, in the CDF Letter to Bishops *Annus Internationalis Familiae*, of 14 September 1994, no. 7, and in John Paul II's address of 24 January 1997 to the Pontifical Council for the Family.

(2) *The interpretation of can. 915 must adhere to "the canon's substantial content, as declared uninterruptedly by the Magisterium and by the discipline of the Church throughout the centuries."* The expression "and others who obstinately persist in manifest grave sin" is to be interpreted as follows: a) "*grave sin*" is to be understood objectively and not by the subjective elements needed for a mortal sin to be imputable, since the minister of communion cannot judge on the subjective elements and the prohibition of c. 915 refers only to the external forum; b) "*obstinate persistence*" refers to "an objective situation of sin that endures in time and which the will of the individual member of the faithful does not bring to an end"; no defiance or prior warning, or any other requirement is needed for obstinacy to exist; c) concerning the requirement of "*manifest*" grave sin, the divorced and remarried whose cohabitation is not *more uxorio* can receive Eucharistic communion if scandal can be removed; these persons continue to live together for serious motives (e.g., the upbringing of the children) but they have assumed the duty to live in full continence and, based on that intention, have received the sacrament of penance.

(3) *Pastoral prudence strongly suggests that public denial of holy communion be avoided as far as possible.* "Pastors must strive to explain to the concerned faithful the true ecclesial sense of the norm, in such a way that they would be able to understand it or at least respect it." The priest responsible for the ecclesial community is the one responsible for discerning those situations and giving precise instructions to the deacon or to any extraordinary minister. If the minister of communion must refuse to distribute it to those who are publicly unworthy, the minister should look for the opportune moment to explain, with extreme charity, the reasons for the refusal. "They must, however, do this with firmness, conscious of the value that such signs of strength have for the good of the Church and of souls." [11]

5. *The forum of conscience and the forum of law when separation is morally impossible*

In accordance with the principles of moral theology, a divorced and remarried person can only be restored to the full communion of charity by separation from the invalidly married spouse and absolution in the sacrament of penance in order to worthily receive holy communion. When separation is not possible without great harm being caused to the children's spiritual and material welfare or to the invalidly married spouse (who may, for instance, be incapable of self-sustenance), cohabitation may continue provided that (i) the parties firmly resolve to abstain from sexual

11. PCILT, ibid., Declaration.

acts and (ii) the scandal caused by their irregular situation is removed. In fact, for that resolve to be firm and true, the persons must use suitable means to turn the near occasions of sexual sin and of scandal into remote occasions, a provision that requires a prudential judgment in accordance with the particular circumstances of each case. Only then can the person take, in good conscience, the *internal forum* decision to continue cohabitation.

The solution provided by moral theology for the *internal forum*, or forum of conscience, cannot be offered in the *external forum*, or forum of the law, and this is so because, by definition, human laws are general rules of conduct which do not address the circumstance of each particular case. Without the prudential judgment on the removal of the near occasion of adultery and of scandal in each particular case (which the general rule cannot supply), a law authorizing continued cohabitation, even when separation is not morally possible, would amount to a declaration that such cohabitation is not a manifest grave sin. Nor can the human law make an exception, in the external forum, for those cases when separation is not morally possible, because the prohibition formulated in c. 915 is of divine origin, as explained above, and cannot admit any exception. Besides, an exception to the prohibition of c. 915 would also imply that the previous marriage bond had, in some manner, ceased to exist, for otherwise the continuation of cohabitation *more uxorio* would constitute adultery. The exception to the prohibition of c. 915 would amount, therefore, to an exception to the law of indissolubility which, being also of divine-positive law, cannot admit exceptions.

The appeal to canonical equity, implicitly or explicitly present in the attempts to find an exception to the prohibition of c. 915 in reference to the divorced and remarried, has also taken the form of seeking to empower personal conscience to declare a marriage non-existent by reason of the fact that the former union is the only one that is existentially permanent. The CDF letter *Annus internationalis familiae* unequivocally replied that, as marriage is by its own nature a public reality, "it must be discerned with certainty by means of the external forum established by the Church whether there is objectively such a nullity of marriage." Referring to the matter under canon 915, the letter insists on the argument that "the Church is in fact the body of Christ, and to live in ecclesial communion is to live in the body of Christ. With the reception of the sacrament, communion with Christ the head can never be separated from communion with his members, that is, with his Church. For this reason, the sacrament of our union with Christ is also the sacrament of the unity of the Church. Receiving eucharistic communion contrary to the norms of ecclesial communion is therefore in itself a contradiction."[12]

12. CDF, ibid., nos. 7 and 9.

916 **Qui conscius est peccati gravis, sine praemissa sacramentali confessione Missam ne celebret neve Corpori Domini communicet, nisi adsit gravis ratio et deficiat opportunitas confitendi; quo in casu meminerit se obligatione teneri ad eliciendum actum perfectae contritionis, qui includit propositum quam primum confitendi.**

Anyone who is conscious of grave sin may not celebrate Mass or receive the Body of the Lord without previously having been to sacramental confession, unless there is a grave reason and there is no opportunity to confess; in this case the person is to remember the obligation to make an act of perfect contrition, which includes the resolve to go to confession as soon as possible.

SOURCES: cc. 807, 856; *EMys* 35; SCDF *Normae Pastorales,* 16 iun. 1972, prooemium et VI (*AAS* 64 [1972] 510, 512); HCW 23

CROSS REFERENCES: cc. 912, 921

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This canon as well as the preceding one formulate those prohibitions that restrict the right to receive holy communion (cf. c. 912). Canon 915, which is addressed to the minister of the sacrament, prohibits communion to persons under certain crimes and notorious sins; c. 916 is addressed to the persons receiving the sacrament and refers to the prohibitions arising from a non-confessed grave sin.

Based on a moral norm, this canon contains a juridical norm which depends, for its application, on the well-formed judgment of the subject of the sacrament to whom the prohibition is addressed, that is to say the faithful "qui conscius est peccati gravi, sine praemissa sacramentali confessione."

In conformity with the norms of morality, the prohibition is suspended *ad casum* when the person afflicted by grave sin has a grave reason to celebrate Mass or receive communion and there is no opportunity to confess. Grave reasons exist when, the opportunity to confess being unavailable, the person who ought to receive is in danger of death (cf. cc. 911, 922), or in danger of infamy should the priest not celebrate or the person not receive.

With a precise formulation of the moral norm, the canon adds that the person under those circumstances of "grave sin," plus having "grave reason" to celebrate or receive, plus having "no opportunity to confess," is under the "obligation to make an act of perfect contrition, which includes the resolve to go to confession as soon as possible."[1]

For a more exact determination of what may constitute *gravis ratio* and "no opportunity to confess," one must appeal to the principles of moral theology which, in conformity with the continuous teaching of the magisterium, have inspired the formula chosen by this canon.[2]

1. Cf. A. MARZOA, commentary on c. 916 in *Pamplona Com.*
2. Cf. 1 Cor 11:27–29; Council of Trent, *sess.* XIII, can. 11: "Ne tantum Sacramentum indigne... sumatur..., illis quos conscientia peccati mortalis gravat, quantumque etiam se contritos existiment, habita copia confessoris necessario praemittendam esse confessionem sacramentalem" (Dz.-Sch., 1680); cf. also *RP* 27; CCC, 1385, 1415, 1457.

917 Qui sanctissimam Eucharistiam iam recepit, potest eam iterum eadem die suscipere solummodo intra eucharisticam celebrationem cui participat, salvo praescripto can. 921 § 2.

One who has received the blessed Eucharist may receive it again on the same day only within a eucharistic celebration in which that person participates, without prejudice to the provision of can. 921 § 2.

SOURCES: cc. 857, 858; *IOe* 60; SCRit Instr. *Tres abhinc annos*, 4 maii 1967, 14 (*AAS* 59 [1967] 442–448); *EMys* 28; *IC* 2

CROSS REFERENCES: c. 918

COMMENTARY

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In order to better understand the spirit and the letter of this canon, we must mention its precedents. Canon 857 of the *CIC*/1917 formulated a juridical-pastoral norm that indirectly fostered the frequent reception of the sacrament and, anticipating a possible excess and abuse of the right, prohibited holy communion from being received more than once a day. Exceptions to this rule were a person's danger of death and the need to prevent profanation. Then, the Second Vatican Council's teaching that holy communion represents a "more perfect participation in Mass" (*SC* 55) logically led, with the passing of time, to a removal of obstacles from that participation and to a strong recommendation to "receive holy communion in the course of a eucharistic celebration" (c. 918).

It should be noted, however, that a "more perfect" participation (*CCC* 1388) means that attending Mass without receiving communion is still a fruitful participation, even if less perfect. It must also be remembered that a person receiving holy communion against the prohibitions of cc. 915 and 916 would be participating only externally and falsely for "his own condemnation" (1 Cor 11: 29).

From all those norms one can conclude that, while fostering daily or frequent communion, preferably within Mass, the canon now under study sets the following restrictions to the right to communion: *a*) communion being received no more than twice within the same day (*iterum eadem die*), as it was authentically interpreted by the CPI (July 11, 1984)[1]; *b*) the

1. CPI, *Response*, August 11, 1984, in *AAS* 76 (1984), p. 746.

second communion being received within Holy Mass only. It should be noted, then, within the letter and the spirit of the law for a person to receive, on the same day, first *extra Missam* and then a second time *intra Missam.*

An exception to the requirement that the *second* communion should be within Holy Mass occurs in danger of death, as prescribed by the reference to c. 921 § 2. This canon strongly suggests (*valde suadetur*) that a person who is in danger of death should communicate again by way of viaticum even if the person has already received communion on that same day. Another exception to the requirement exists when, as contemplated by *CIC*/1917, there is need of preventing the profanation of the sacrament (cf. c. 857 with its reference to c. 858 § 1).

The reason for restricting the second communion of the same day to the celebration of Mass only is the same reason that motivated the grant of a second communion by *IC* 2, namely, "the more perfect participation" in a Mass that a person may find necessary or fitting to attend: the need, for instance, to attend the anticipated Sunday Mass in order to fulfil the precept, even if communion has already been received that same day, or of attending the evening Mass of Holy Thursday, the second Mass of Easter Day, or an occasional or unforeseen celebration, such as a ritual or a funeral Mass, when communion has already been received on that day. Therefore, all those circumstances (including mere devotion or other fitting reasons, which the norm does not exclude) are reasons for a second communion. This is restricted, however, to the celebration of a Mass, which is the reason for the grant of holy communion received *iterum eadem die.*

918 **Maxime commendatur ut fideles in ipsa eucharistica celebratione sacram communionem recipiant; ipsis tamen iusta de causa petentibus extra Missam ministretur, servatis liturgicis ritibus.**

It is most strongly recommended that the faithful receive holy communion in the course of a eucharistic celebration. If, however, for good reason they ask for it apart from the Mass, it is to be administered to them, observing the liturgical rites.

SOURCES: c. 863; *MD* 564–566; SCRit Decr. *Novum rubricarum*, 26 iul. 1960, 502 (*AAS* 52 [1960] 680); *SC* 55; *PM* I: 4, II: b; *CAd* I, 1; *EMys* 31, 33; GIRM prooemium (13); HCW 14

CROSS REFERENCES: cc. 528 § 2, 897, 898, 914, 866

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The duty to ensure that the faithful should be nourished by the frequent reception of the Holy Eucharist is one of the obligations imposed by the Code on the pastors of souls (cf. c. 528 § 2). As "most strongly recommended" by the canon now under study, this is to take place preferably *intra Missam*. The recommendation of this canon does not, however, disallow the legal prohibitions which, formulated in cc. 915 and 916, are based on 1 Cor 11: 29 (see commentary on c. 917).

It can happen, not infrequently, that because of the scarcity of Masses and the diversity of work schedules, not all the faithful who wish to receive communion can attend daily Mass, from which derives, then, the *duty* of those entrusted ex officio with the care of souls to administer holy communion *extra Missam* to the person who asks for it with a "just cause."

In making a prudential judgment about the existence of the *just cause*, it should be taken into account that, on the one hand, the desire of the faithful to be nourished with the Eucharistic communion, even daily, can in itself be a just cause (cf. c. 528 § 2); and that, on the other hand, it would not be just for the person entrusted with the pastoral care of a community to neglect other duties towards the same community in order to satisfy that desire, if such was the only alternative in a particular situation.

The rite of administering holy communion *extra Missam* is found in the Roman Ritual in two forms to be used according to different circumstances. It should also be remembered that the liturgical norms prescribe that, on Holy Thursday and Good Friday, communion *extra Missam* is allowed only for the sick, and on Holy Saturday in the form of viaticum only.

919 § 1. Sanctissimam Eucharistiam recepturus per spatium saltem unius horae ante sacram communionem abstineat a quocumque cibo et potu, excepta tantummodo aqua atque medicina.

§ 2. Sacerdos, qui eadem die bis aut ter sanctissimam Eucharistiam celebrat, aliquid sumere potest ante secundam aut tertiam celebrationem, etiamsi non intercesserit spatium unius horae. § 3. Aetate provecti et infirmitate quadam laborantes necnon eorum curae addicti, sanctissimam Eucharistiam accipere possunt, etiamsi intra horam antecedentem aliquid sumpserint.

§ 1. Whoever is to receive the blessed Eucharist is to abstain for at least one hour before holy communion from all food and drink with the sole exception of water and medicine.

§ 2. A priest who, on the same day, celebrates the blessed Eucharist twice or three times may consume something before the second or third celebration, even though there is not an hour's interval.

§ 3. The elderly and those who are suffering from some illness, as well as those who care for them, may receive the blessed Eucharist even if within the preceding hour they have consumed something.

SOURCES: § 1: SCHO Litterae, 22 mar. 1923 (*AAS* 15 [1923] 151–152); SCHO Normae, 1 iul. 1931; PIUS Pp. XII, Ap. Const. *Christus Dominus*, 6 ian. 1953 (*AAS* 45 [1953] 15–24); SCHO Instr., 6 ian. 1953 (*AAS* 45 [1953] 47–53); SCRit Decr. *Romana*, 3 iun. 1953 (*AAS* 46 [1954] 68–71); PIUS Pp. XII, m. p., *Sacram communionem*, 19 mar. 1957 (*AAS* 49 [1957] 177–178); PAULUS Pp. VI, Rescr., 21 nov. 1964 (*AAS* 57 [1965] 186); *EM* IX, 20; SCDW Instr. *Actio pastoralis*, 15 maii 1969, 10d (*AAS* 61 [1969J 810); *IC* 3; HCW 24
§ 2: *PM* I, 3; SCB *Index facultatum*, 1 ian. 1968, 34
§ 3: c. 858 § 2; CodCom Resp., 24 nov. 1927; PIUS Pp. XII, Ap. Const. *Christus Dominus*, 6 ian. 1953 (*AAS* 45 [1953] 15–24); PIUS Pp. XII, m. p., *Sacram communionem*, 19 mar. 1957, 4 (*AAS* 49 [1957] 177–178); *IC* 3; HCW 24

CROSS REFERENCES: —

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By *Eucharistic fast* is meant the abstention from any solid food and drink for one hour before receiving communion with the exception, however, of water and medicine. The Eucharistic fast, of very ancient tradition in the Church, is part of the "good manners" of piety[1] to be observed in preparation for receiving Holy Eucharist with due reverence (cf. *CCC* 1387). In the present canonical discipline, the time requirement of the Eucharistic fast is reduced to one hour and is dispensed by law in the cases listed in the canon. It must be noted that, while the canon dispenses from this requirement when it would hinder the celebration of Mass and the partaking of holy communion, the letter of the canon suggests, in typically concise fashion, a generous observance of this minimal requirement when it specifies in § 1 that the fast should last for "at least" (*saltem*) one hour and in § 2 that the person may consume "something" (*aliquid*).

The following persons are exempt from Eucharistic fast:

a) those who have to take some medicine within the hour preceding communion (§ 1). By *medicine* is understood, not just a pharmaceutical medication but any solid food or any drink (water being already excepted) that the person must take *per modum medicinae*, that is to say, as a medicinal remedy.

b) priests who have already said Mass on the same day (§ 2). By allowing them to take some solid food or drink "even though there is not an hour's interval," the canon clearly dispenses the priest from the fast preceding a second or a third Mass. The canonical rationale for granting this exemption (and for making use of it) is to be found in the fact that, lacking that dispensation, the priest who has to celebrate two or more Masses within a short time interval, would have to remain without any food for a long time. This dispensation granted by law assumes, however, that in his good judgment and piety, the priest will find other ways of expressing with his conduct the reverence that must precede every liturgical celebration, from which the canon cannot dispense.

c) the elderly and the infirm who are prevented, by the special care that they receive, from observing the times of the Eucharistic fast. One can deduce from the qualification of those persons as "laboring under" (*laborantes*) and from the mention of "those who care for them" (*eorum curae addicti*) that, for the purpose of the exemption, the canon equates the aged with the infirm by reason of their common condition of requiring special care. However, the canon does not require that the elderly and the

1. ST. J. ESCRIVÁ, *The Way*, no. 541.

infirm be confined to their home or to the place where they are being cared for, nor that they be in need of taking some food *per modum medicinae*, for those in such need are already counted in § 1. All that is required for the aged and the infirm to use this exemption is that they or others be so inconvenienced, by having to adjust their schedules to the time requirements, that they could not receive communion without this dispensation.

d) those who care for the elderly and the infirm. Since the care of the elderly and the infirm frequently makes the practice of the Eucharistic fast inconvenient for those "who care for them," the canon extends the dispensation to the persons who give that care so that they may not miss the opportunity to receive holy communion.

The spirit of the canon is that this exemption should be applied with largess to the persons listed. Nevertheless, pastors of souls should also foment, in those persons, other ways of preparing themselves to receive the Lord with due reverence, from which the canon neither intends nor is able to dispense. For instance, "they can observe some time of silence and recollection after being suitably notified about the time when the sacrament will be administered (cf. Instr. *IC* 3)."[2]

2. A. MARZOA, commentary on c. 919, in *Pamplona Com.*

920 **§ 1. Omnis fidelis, postquam ad sanctissimam Eucharistiam initiatus sit, obligatione tenetur semel saltem in anno, sacram communionem recipiendi.**

§ 2. Hoc praeceptum impleri debet tempore paschali, nisi iusta de causa alio tempore intra annum adimpleatur.

§ 1. Once admitted to the blessed Eucharist, each of the faithful is obliged to receive holy communion at least once a year.

§ 2. This precept must be fulfilled during paschal time, unless for a good reason it is fulfilled at another time during the year.

SOURCES: cc. 859–861; CodCom Resp., 3 ian. 1918; SCCouncil Ind. pt., 18 nov. 1924

CROSS REFERENCES: cc. 842 § 2, 843, 852 § 1, 866, 914, 916

COMMENTARY

Ignatius Gramunt (†)

The divine law obligation to receive the Holy Eucharist (cf. Jn 6:54) is made more specific by the norm of ecclesiastical law formulated in this canon (cf. *CCC* 1389). For the correct interpretation of this norm, one must take into account that, since the Holy Eucharist is a necessary nourishment of Christian life (cf. c. 528 § 2), the law of the Church reminds the faithful of that necessity by establishing a *minimal* obligation "to receive holy communion at least once a year" while encouraging them to receive frequently with the required dispositions (cf. c. 898).

The canon clearly prescribes that the substance of the obligation consists of receiving "holy communion at least once a year," and that the mode or manner of fulfilling the obligation is "during paschal time" because of its liturgical significance. While the manner is also obligatory, a good reason (*causa iusta*) can dispense from it. The obligation, then, to communicate at least once a year continues to oblige even if the paschal time had already elapsed, as it was explicitly prescribed by c. 859 of the *CIC*/1917.

By *paschal time* in the strict sense is understood the time between the vigil of Easter Sunday and Pentecost Sunday. In the former discipline, that time was extended, by special indult in many regions of the world, to some weeks before and after the paschal time strictly understood. In the

present discipline, the obligation can be legitimately fulfilled, as mentioned above, during some other time of the year for a good reason or "just cause." Concerning the just cause, however, the authorization or judgment from the ecclesiastical authority is not required; a person can, rather, decide privately following the general principles of moral theology. One can, nevertheless, seek the confessor's advice in order to be sure of acting with a good conscience.

Concerning this entire matter, it may be useful to remember that a person who has neglected sacramental confession before holy communion, as prescribed in c. 916, and who receives sacrilegiously during paschal time does not fulfil the obligation of the canon under study. Likewise, the person who simply neglects to receive communion during the paschal time is not dispensed from the obligation because of the lack of a "just cause" for the deferment. In those or similar cases, the reasonable thing to do is to prepare oneself for communion with a good confession in which the negligence is mentioned in order to be able to receive worthily "at least once a year." On his part, the confessor who absolves a penitent who has failed to fulfil the obligation during paschal time should remind the penitent to receive holy communion as soon as possible.

In what refers to the *subjects* of this obligation, or the faithful "obliged to receive holy communion," it is to be understood that they are those who have been initiated in accordance with the prescriptions of c. 914 for children, or according with c. 866 for those who have reached the use of reason (cf. c. 852 § 1). Therefore, those persons lawfully baptized or received into the Church who, lacking the initiation prescribed by those canons, had not received first holy communion are not subject to the obligation of this canon but to the obligation of receiving holy communion *as soon as possible.* This can be derived from the following considerations.

a) The obligation established by the canon under study applies only to faithful admitted to first holy communion ("omnis fidelis, postquam ad sanctissimam Eucharistiam initiatus sit") and not to all those who had reached the use of reason as was prescribed by c. 859 of *CIC*/1917.

b) The present discipline, however, urges on parents and pastors to see to it that children who have reached the use of reason receive communion as soon as possible (cf. c. 914). *A fortiori*, then, the adult person who has not received first holy communion ought to arrange for receiving it "as soon as possible." This can also be deduced from those canons (cf. cc. 843 § 2, 852 § 1, 866) which require holy communion for "full Christian initiation."

921 **§ 1. Christifideles qui versantur in periculo mortis, quavis ex causa procedenti, sacra communione per modum Viatici reficiantur.**

§ 2. Etiamsi eadem die sacra communione refecti fuerint, valde tamen suadetur ut qui in vitae discrimen adducti sint, denuo communicent.

§ 3. Perdurante mortis periculo, commendatur ut sacra communio pluries, distinctis diebus, administretur.

§ 1. Christ's faithful who are in danger of death, from whatever cause, are to be strengthened by holy communion as Viaticum.

§ 2. Even if they have already received holy communion that same day, it is nevertheless strongly recommended that in danger of death they should communicate again.

§ 3. While the danger of death persists, it is recommended that holy communion be administered a number of times, but on separate days.

SOURCES: § 1: c. 864 § 1; *EMys* 39; RA 27, 29; *DPMB* 89
§ 2: c. 864 § 2; *EMys* 39
§ 3: c. 864 § 3

CROSS REFERENCES: cc. 911, 922

COMMENTARY

Ignatius Gramunt (†)

1. In order that the faithful may satisfy the obligation to receive holy communion in danger of death ("praecepto tenentur": RA, *Prae* 27), this canon reminds the pastors of souls mentioned in c. 911 about their duty to administer communion in the form of viaticum to "Christian faithful who are in danger of death" (§ 1). As long as the danger of death is real, any cause of such danger (*quavis ex causa procedenti*) is contemplated in the canon. The cause, then, can be *intrinsic* to the person, such as illness or old age, or *extrinsic*, such as death penalty, shipwreck and so forth.

2. By the name *viaticum* is understood the special rite to be used, in accordance with the options provided by the Roman Ritual, to administer holy communion to those in danger of death. "In addition to the Anointing of the Sick, the Church offers those who are about to leave this life the Eucharist as Viaticum. Communion in the Body and Blood of Christ, received at this moment of 'passing over' to the Father, has a particular significance

and importance. It is the seed of eternal life and the power of resurrection, according to the words of the Lord: 'He who eats my flesh and drinks my blood has eternal life, and I will raise him up at the last day' (Jn 6:54). The sacrament of Christ once dead and now risen, the Eucharist is here the sacrament of passing over from death to life, from this world to the Father (cf. Jn 13:1)" (*CCC* 1524).

Viaticum can be administered within or outside Holy Mass, and in the latter form it may be preceded by sacramental confession and the anointing of the sick in one continuous rite: "It is very fitting to celebrate it within the Eucharist, the memorial of the Lord's Passover. If circumstances suggest it, the celebration of the sacrament can be preceded by the sacrament of Penance and followed by the sacrament of the Eucharist. As the sacrament of Christ's Passover the Eucharist should always be the last sacrament of the earthly journey, the 'Viaticum' for 'passing over' to eternal life" (*CCC* 1517).

3. It is "strongly suggested," as prescribed in § 2, that the viaticum be administered, in accordance with the foreseen options, even when the person in danger of death had already received communion on the same day before the danger had occurred.

It is also recommended, as indicated in § 3, that while the danger of death persists, the sick person should continue to receive the nourishment of holy communion on successive days. The rite of communion to the sick is to be used but not necessarily under the form of viaticum each time (cf. c. 922).

922 **Sanctum Viaticum infirmis ne nimium differatur; qui animarum curam gerunt sedulo advigilent, ut eodem infirmi plene sui compotes reficiantur.**

Holy Viaticum for the sick is not to be unduly delayed. Those who have the care of souls are to take assiduous care that the sick are strengthened by it while they are in full possession of their faculties.

SOURCES: c. 865; *EMys* 39

CROSS REFERENCES: c. 911, 921

COMMENTARY

Ignatius Gramunt (†)

In this canon, like in the previous canon (cf. c. 921), the legislator seeks to assist the faithful to receive viaticum in due time.

The duty "to take assiduous care" that the sick may receive viaticum on time falls on parish priests, chaplains and others with care of souls (cf. RA, *Prae* 27). It also affects relatives, superiors, and those caring for the sick person who should give appropriate notice to the priest,[1] as specified in c. 1001 when referring to the anointing of the sick.

If we relate this canon to c. 921 § 2, we can easily deduce that the canons recommended that holy communion be administered with the rite of viaticum when the closeness to death becomes evident and then again when the new danger of death becomes more critical. This recommendation should not prevent the administration of holy communion from being, even daily, between those two other critical moments in accordance with the rite for the sick.

1. Cf. A. MARZOA, commentary on c. 922, in *Pamplona Com.*

923 **Christifideles Sacrificium eucharisticum participare et sacram communionem suscipere possunt quolibet ritu catholico, firmo praescripto can. 844.**

Christ's faithful may participate in the eucharistic Sacrifice and receive holy communion in any catholic rite, without prejudice to the provisions of can. 844.

SOURCES: c. 866 § 1; SCEC Resol., 26 ian. 1925

CROSS REFERENCES: cc. 112, 844, 846 § 2

COMMENTARY

Ignatius Gramunt (†)

By "any catholic rite" is to be understood each of the liturgical rites duly approved for the Latin Church as well as the liturgical rites of those Eastern Catholic Churches with their own hierarchy and discipline and in full communion with the Roman Pontiff[1] (cf. c. 112).

The difference of rite, whether liturgical or jurisdictional, does not restrict the right of the faithful to participate in the Holy Eucharist in a rite other than one's own. Consequently, the difference of rite does not exempt pastors of souls from their duty to admit the faithful from another rite to participate in the celebration of the Eucharist and to administer holy communion to those who legitimately ask for it. However, the minister should administer holy communion in his own rite, as prescribed by c. 846 § 2.

The reference to c. 844 made by the canon under study may not be strictly necessary because the rites of the Eastern Catholic Churches cannot be confused with the sacramentally valid rites of non-Catholic ministers. It would seem, however, that the explicit reference to c. 844 is meant to emphasize that, except for the cases listed in it, "Catholic ministers may lawfully administer the sacraments only to catholic members of Christ's faithful, who equally may lawfully receive them only from catholic ministers ..." (c. 844 § 1).

1. Cf. A. DE FUENMAYOR, commentary on c. 112, in *Pamplona Com.*

ART. 3
De ritibus et caeremoniis eucharisticae celebrationis

ART. 3
The Rites and Ceremonies of the Eucharistic Celebration

924 **§ 1. Sacrosanctum eucharisticum Sacrificum offerri debet ex pane et vino, cui modica aqua miscenda est.**

§ 2. Panis debet esse mere triticeus et recenter confectus, ita ut nullum sit periculum corruptionis.

§ 3. Vinum debet esse naturale de genimine vitis et non corruptum.

§ 1. The most holy Sacrifice of the Eucharist must be offered in bread, and in wine to which a small quantity of water is to be added.

§ 2. That bread must be wheaten only, and recently made, so that there is no danger of corruption.

§ 3. The wine must be natural, made from grapes of the vine, and not corrupt.

SOURCES: § 1: c. 814; GIRM 281; *ID* 8
§ 2: c. 815 § 1; SCDS Resp. 7 dec. 1918; SCDS Instr. *Dominus salvator noster*, 26 mar. 1929 (*AAS* 11 [1929] 631–642); *Rituale Romanum*, 1952, tit. V, c. I, 7; GIRM 282, 285; SCDW Instr. *Liturgicae instaurationes*, 5 sep. 1970, 5 (*AAS* 62 [1980] 700); *ID* 8
§ 3: c. 815 § 2; SCHO Resp., 2 aug. 1922; GIRM 284

CROSS REFERENCES: cc. 934 § 2, 939

COMMENTARY
Enrique de León

The matter of the sacrament of the Eucharist is determined with precision in the present canon, establishing in a general way what it is, and specifying the characteristics that the bread and the wine must have for them to constitute the valid matter of the Eucharistic sacrifice.

While the bread and the wine are indispensable for the validity, since they constitute, by divine institution, the necessary matter of the sacrament, the obligation of adding a little water to the wine, set forth next in the first paragraph, affects, on the other hand, the licitness and not the validity. The Council of Trent, echoing a secular tradition, confirmed the said rite and imposed the serious obligation its realization.[1]

1. *Material of the bread*

In reference to the material of the bread, specifically covered in § 2, what is essentially envisaged in GIRM 282 is reiterated by indicating with precision that the bread must be exclusively of wheat. The Latin term *mere* corresponds in English to the adverb "only," that is, pure wheat and exclusively wheat; thus, as recently affirmed by the CDF, the valid matter will be the hosts in which there is "a quantity of gluten that is sufficient to obtain panification, with no foreign matter having been added and, in any case, the procedure used in the making will not be one that will denature the substance of the bread."[2] Thus it ratified, and determined with greater precision, what has previously been established in the Instruction *Dominus salvator noster*,[3] concerning the possibility of mixing wheat with another substance. Therefore, "the special hosts—expressly affirmed in the 1995 CDF circular—*quibus glutinum ablatum est* (from which the gluten has already been removed) are invalid matter,"[4] since gluten is a protein of capital importance in the makeup of wheat. As for the possibility of using bread with a small quantity of gluten in the cases of priests or laypersons who evidence celiac disease, the ordinary may grant the appropriate license after presentation of the medical certificate.[5]

The same § 2 adds that the bread must have been "made recently," that is, during the amount of time, following the elaboration of the bread, that is necessary for considering that there is no danger of corruption (cf. GIRM 282, 285) and the material of the bread continues to be valid for consecration.[6] It is true that the formulation of this paragraph does not permit us to know what may be understood by the expression "recently made," that is, how much time after the elaboration of the bread may it be considered that the danger of corruption does not exist and, therefore, the material of the bread continues to be valid for the consecration.

1. Cf. Council of Trent, Sess. 22, ch. 7 and can. 9, Dz.-Sch. 1748 and 1759.
2. Cf. CDF, Circular Letter directed to the presidents of bishops' conferences, June 19, 1995, Prot. no. 89/78.
3. Cf. SCDS, Instr. *Dominus salvator noster*, March 26, 1929, in *AAS* 21 (1929), p. 632.
4. Cf. CDF, Circular Letter, cit.; SCDF, Resp., October 29, 1982, in *AAS* 74 (1982), pp. 1298–1299.
5. Cf. CDF, Circular Letter, cit.
6. Cf. SCDS, Resp., December 7, 1918, in *AAS* 11 (1919), p. 8.

For that we must return once more to the former legislation, first to a reply of the SCDS in which there is the custom of purchasing forms every two or three months so that they may be suitable for consecration during that time. In that reply, allusion is also made to the Roman Ritual as well as to the *CIC*/1917—then of recent promulgation—and, specifically to the expressions *recenter confectus* of the c. 815 and *frequenter renoventur* of c. 1272 of the *CIC*/1917, in such a way that a period as long as two or three months cannot be understood to be included in the reported expressions. Perhaps it is for this reason that the period of one month has been considered to be the longest term for the consumption of the host after its confection.

Even within these limits it must be taken into account, on the one hand, what is prescribed by c. 934, § 2, to the effect that wherever the most Holy Eucharist is reserved, a priest will celebrate Mass at least twice a month, which leads to the thought that it is thus established, not only by reason of the presence and adoration of Jesus Christ, but also by the need to proceed to its renovation within reasonable time periods.[7] On the other hand, c. 939 explicitly says that consecrated hosts must be renovated frequently by appropriately consuming the former. Thus, from everything that has been seen up to now, it may be concluded that the most prudent term for the renovation of the most holy sacrament fluctuates between one and two weeks; and this is the sense in which the expression "recently made" of the *CIC* must be understood, that is, made one or two weeks before, so that in effect there will not be any danger of corruption.

All this must be understood without excluding the possibility of reducing that time in those places where the environmental and climatic conditions make it advisable.[8]

2. *Material of the wine*

As for the material of the wine the canon is also clear in demanding that it be natural, fruit of the vine and not corrupted.[9]

Normally, common usage calls for a liquid wine, after fermentation; and even though the canon does not specify that process in its writings, it will have to be inferred in what concerns the licitness of the matter, since the term "wine" does include that process.

7. Cf. SCPF, Resp., March 14, 1922, in X. OCHOA, *Leges Ecclesiae*, I, no. 398, col. 429, wherein it is stated that "...*decimo quinto quoque die renoventur*... ."

8. Cf. SCDW, Instr. *Actio pastoralis*, May 15, 1969, no. 10, in *AAS* 61 (1969), p. 810; Instr. *Liturgicae instaurationis*, September 5, 1970, no. 5, in *AAS* 62 (1970), pp. 692–704.

9. Cf. GIRM, 284; SCSDW, Instr. *Inaestimabile donum*, April 5, 1980, in *AAS* 72 (1980), pp. 331–343.

In the old set of norms of the Roman Missal it was said that the "must" even when squeezed in the chalice itself is valid material of the consecration, but that it was seriously illicit, other than in the case of need. And in this regard two documents of CDF are of great interest: the first is the answer of that congregation, in 1981, to a question of the SCRSI in which the issue was which congregation had the competence to authorize alcoholic priests to celebrate the Holy Mass with the "must of wine" instead of fermented wine. In the reply it was said that disciplinary issues were the responsibility of the SCDW and that the SCDF retained "only those cases for which the doctrinal study had not yet been completed, as for example the granting of pardons for different reasons of alcoholism or for preserved grape juice instead of fresh must."[10] As a matter of fact, fermentation is a natural process that occurs almost immediately after drawing the liquid from the compressed grape and therefore the must, as such, remains unfermented for a very short time; however, preservative substances that hinder fermentation are often used and, at the same time and for the same reason, denature the must. The second document of the CDF about which we made reference, from 1955, stands up to that situation and establishes definitively that "must is understood to mean the juice of the grape, fresh or preserved, in which fermentation is suspended (by freezing or other methods that do not alter its nature)," and that the ordinary may, "after presentation of a medical certificate, grant the license to use the must to the priests affected with alcoholism or, another illness that would prevent them from consuming even a minimum amount of alcohol."[11] However, the same document states that the "preferred solution continues to be the communion *per intinctionem*, or else the species of bread in the concelebrations," that was already anticipated in a reply by this congregation in 1982.[12]

What is most novel in this recent CDF document , which highlights the importance of observing what is prescribed about the material of the sacrament of the Eucharist, is found in section d) of the *Normae communes* that concludes the circular, that reads literally "given the centrality of the eucharistic celebration in the priestly life, candidates for the priesthood affected by celiac disease or those who suffer from alcoholism or a similar illness cannot be admitted to sacred orders."[13]

Wine made from raisins is also valid matter, providing that before squeezing them they are left for a few hours in water so that they recover that which they had lost, and so that the color and taste will be that of real wine.[14]

10. SCDF, Resp., September 22, 1981, in X. OCHOA, *Leges Ecclesiae*, VI, no. 4863, col. 8247.
11. Cf. CDF, Circular Letter, cit.
12. Cf. SCDF, Resp., October 29, 1982, in *AAS* 74 (1982), pp. 1298–1299.
13. Cf. CDF, Circular Letter, cit.
14. Cf. SCHO, Resp., July 22, 1706; Resp., May 7, 1879; Resp., April 10, 1889.

925 Sacra communio conferatur sub sola specie panis aut, ad normam legum liturgicarum, sub utraque specie; in casu autem necessitatis, etiam sub sola specie vini.

Holy communion is to be given under the species of bread alone or, in accordance with the liturgical laws, under both species or, in case of necessity, even under the species of wine alone.

SOURCES: c. 852; *SC* 55; *Ritus servandus in concelebratione Missae et ritus communionis sub utraque specie*, 1965; *EMys* 32, 41; SCDW Instr. *Actio pastoralis*, 15 maii 1969, 7 (*AAS* 61 [1969] 806–811); SCDW Instr. *Memoriale Domini*, 29 maii 1969 (*AAS* 61 [1969] 541–545); GIRM prooemium (14), 240–242; SCDW Instr. *Sacramentali communione*, 29 iun. 1970 (*AAS* 62 [1970] 664–666); SCDW Instr. *Liturgicae instaurationes*, 5 sep. 1970, 6 (*AAS* 62 [1970] 700); RA 95; *ID* 12

CROSS REFERENCES: cc. 910, 924 §§ 2–3

COMMENTARY

Enrique de León

1. *Communion under only the species of bread*

The canon contemplates the three possible forms of administering sacred communion. The first of these, that is, under the species of bread alone, constitutes the ordinary way, already established in the Council of Trent, primarily to express in a clear way—and to avoid any kind of doubt in that respect—that also under one of the sacramental species Christ is received "completely and entirely."[1]

To this, other reasons of convenience should be added, which are in no way immaterial, that reasonably advise the ordinary administration of the sacred communion under the species of bread alone.

a) Among them would be, in the first place, to avoid the danger of spilling the *sanguis*, that almost inevitably could happen when a large number of faithful are consuming it.

1. Council of Trent, *Sess.* 21, c. 3, Dz.-Sch., no. 1733.

b) On the other hand, it is also a question of avoiding the natural and understandable revulsion that could be caused by a large number of people communicating from the same chalice.

2. *Communion under the two species*

Notwithstanding all this, and according to what is pointed out in GIRM, *Proemium* 14, it is nowadays rare to question the doctrinal principles of the full value of the Eucharistic communion received under the species of bread alone. The Second Vatican Council (cf. *SC* 55) had a viewpoint that differed from the Council of Trent. Vatican II allowed, in some cases, "for the communion under both species, namely, whenever on account of this clearer manifestation of the sacramental sign the faithful will have occasion to better comprehend the mystery in which they participate." In this way, communion under two species is established as an extraordinary form of administration that, consequently, has to adapt itself in regard to cases and mode, to what is established in the corresponding liturgical laws, as the canon itself specifies.

These liturgical norms are specifically, and in chronological order, GIRM 240–252 and the Instruction *Sacramentali communione*,[2] with its *Appendix*, which enumerates a series of concrete cases in which the communion under the two species is proper—the spouses at the Mass during which their marriage takes place, the confirmed adult in his confirmation Mass, the ordained in their ordination Mass, etc.—if the ordinary thinks it is appropriate (GIRM 242 and *Appendix*). Other than these, only the bishops' conferences may establish norms and conditions under which the ordinaries, in turn, may grant the faculty of communicating under the two species, primarily in the theoretical situations that have special relevance for the spiritual life of a community or group of faithful.

Finally, in number 12 the Instruction *Inaestimabile donum* exhorts the bishops' conferences and the ordinaries not to surpass what is established by the existing discipline in regards to the concession of the communion under the two species, in a way that it be granted on very specific celebrations and not done indiscriminately; the groups that benefit from such a concession must be, on the other hand, well defined and homogeneous.

As for the different modes of communicating under the two species, nos. 243–252 of the GIRM establish very precise rules in this regard, pointing out the various possibilities admitted and the way to realize them. Four forms of giving the communion under the two species are recognized:

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2. Cf. SCDW, Instr. *Sacramentali communione*, June 29, 1970, in *AAS* 62 (1970), pp. 664–667.

a) *Drinking directly from the chalice.* In the first place Christ's body is communicated in the usual mode. Then, approaching the minister—the same who has distributed the host or another priest or deacon present there—the communicant brings to his lips, with his own hands, the chalice that is being offered and drinks. He returns the chalice to the minister, who cleans the outside of the chalice with the purificator. Once communion is finished, the priest or another minister, having returned to the altar, consumes the remaining consecrated wine and proceeds to perform the usual purifications.

b) *By intinction.* If a deacon or a priest is present, the celebrant priest offers to him the chalice and the purificator, taking in turn the paten or the ciborium with the consecrated species; next, the celebrant adds a particle of the host in the chalice and, presenting it to each, says: "The body and blood of Christ." The communicant, having the paten below his mouth, answers, "Amen," and receives the Eucharist. At the end, as in the preceding case, the remaining wine is consumed and purified in the usual way. If the celebrant is alone, providing it is possible, he takes the chalice and the ciborium with his left hand and distributes the communion under the two species by intinction as already described. Since, ordinarily, this solution will not be possible because of the difficulty involved in having the chalice and the ciborium in one hand and the risk involved therein, it is possible to ready beforehand a small table in the most appropriate place with a corporal and a purificator, on top of which the celebrant may place the chalice or the ciborium to facilitate the distribution of communion.

To make it possible to distribute conveniently the hosts after they have been partially immersed in the blood of the Lord, it is necessary for them to be neither too soft nor too small, but with a little more consistency than usual, according to GIRM 243.

c) *With a cannula.* Whenever a priest or the deacon is present, what has been indicated above for the communion of the body of Christ is followed. Then, he who communicates approaches the minister who, while lifting up the chalice, says to him: "The blood of Christ." He responds, "Amen," and with the cannula or pipette offered to him by the minister, consumes the blood of the Lord from the chalice. Then, careful not to spill even a drop, with the same cannula sucks a little of the water from the vessel which the minister holds in his hand. Finally, he sets the cannula in another container or paten that is offered to him and leaves. If other than the celebrant no deacon or priest is present, the celebrant will proceed as it has been indicated in section (a) for this specific circumstance, and in regards to communion from the chalice, and a minister beside him will hold the container with the water for purifying the cannula.

In any case, as pointed out in GIRM 243, the cannula, both the celebrant's as well as that of the faithful who communicate in this fashion, must be made of silver, and there will always be a container with water to purify the cannula as well as a paten on which to place them.

d) *With a small spoon.* As in the foregoing cases, if a deacon, a priest or an acolyte is present, he will hold the chalice with his left hand and, to each of those present for communion, who in turn will hold the paten below his mouth, will give the blood of Christ with the small spoon, while saying, "The blood of Christ," in the meantime taking care not to touch the lips or the tongue of the communicants with the spoon. In the event that the celebrant is alone, he himself will distribute the *sanguis* once he has finished distributing the body of Christ.

3. *Communion under the sole species of wine*

The canon ends with a reference to the administration of the sacred Eucharist under the sole species of wine as an exceptional form that only will be done in case of need. This case of need will have to be understood under the assumption envisaged in *EMys* 41, that is, when by reason of illness communion cannot be taken under the species of bread, whether because of difficulties in swallowing solid foods, for example, or because of an allergy to gluten—the so-called celiac disease—which prevents them from eating food which has wheat as one of the ingredients.[3] In either case, and as established in the said instruction, the Mass may be celebrated for the sick person, as the ordinary may determine, and if it should not be possible or convenient to celebrate the Mass every time that the sick person goes to communion, the *sanguis* must be reserved in a chalice, adequately covered, and kept in the tabernacle, later taking it to the sick person in a dignified and closed container, thus avoiding the risk of spilling.

For administration, the mode considered the most suitable among those provided for the communion under the two species will be selected. If once the communion is administered the chalice is not completely consumed, the minister himself must do it, proceeding afterwards with the appropriate ablutions.

From the textual and contextual tone of the canon it follows that the sacred communion must be administered by the appropriate minister, and does not allow the faithful to take by themselves the consecrated bread and the sacred chalice, and much less to pass it from one to the other. (cf. Instr. *ID* 9).

3. Cf. SCDF, Resp., October 29, 1982, in *AAS* 74 (1982), pp. 1298–1299.

926 In eucharistica celebratione secundum antiquam Ecclesiae latinae traditionem sacerdos adhibeat panem azymum ubicumque litat.

In the eucharistic celebration, in accordance with the ancient tradition of the latin Church, the priest is to use unleavened bread wherever he celebrates Mass.

SOURCES: c. 816; SCDW Instr. *Actio pastoralis*, 15 maii 1969, 10d (*AAS* 61 [1969] 810); GIRM 282; SCDW Instr. *Liturgicae instaurationes*, 5 sep. 1970, 5 (*AAS* 62 [1970] 698)

CROSS REFERENCES: c. 924 § 2

COMMENTARY

Enrique de León

The canon reaffirms and continues an ancient tradition of the Latin Church which had its beginnings in the Eighth century: the use of azyme bread, that is, unleavened bread as utilized by the Lord in the Last Supper by following the rite of the Hebrew paschal supper.[1] This disposition, also collected in GIRM 282, and in no. 8 of the Instruction *Inaestimabile donum*,[2] seriously commits the Latin rite priest "wherever he may celebrate the Mass," that is, when he brings into being the Eucharist in Catholic territories or churches of a rite different from the Latin, where—unlike the Latin rite—leavened bread is licit material for consecration.

Although the canon does not make explicit reference to the external form that the hosts must have for consecration, it is clear that the matter is directly related to the fact that the bread must be azyme. Both GIRM 283, as well as the Instruction *Liturgicae instaurationis*[3] 5, and Instruction *Inaestimabile donum* 8, are referring to the external form of the host with the expression "semper forma tradita conficiendus est," which is understood as the flat and circular form that results after cooking over a fire a mixture of wheat flour and natural water; and in a way that it will "actually appear as food," "permit a thorough fractioning which will not

1. Cf. Mt 26:17; Mk 14:12; Lk 22:7.
2. Cf. SCSDW, Instr. *Inaestimabile donum*, April 3, 1980, in *AAS* 72 (1980), pp. 331–343.
3. Cf. SCDW, Instr. *Liturgicae instaurationis*, September 5, 1970, in *AAS* 62 (1970), p. 697.

give rise to excessive fragments," and "will not wound the sensitivity of the faithful when they receive it."

For distribution of communion to the faithful, the host will be small, and bigger for the priest, in such a way that it may be broken up and the material for the Eucharistic celebration may be actually presented as food, just as it is explicitly said in the already cited no. 283 of GIRM.

927 **Nefas est, urgente etiam extrema necessitate, alteram materiam sine altera, aut etiam utramque extra eucharisticam celebrationem, consecrare.**

It is absolutely wrong, even in urgent and extreme necessity to consecrate one element without the other, or even to consecrate both outside the eucharistic celebration.

SOURCES: c. 817

CROSS REFERENCES: cc. 899, 924

COMMENTARY

Enrique de León

In the same manner that our Lord consecrated the bread and the wine, one immediately after the other, and the two within the Eucharistic celebration, this canon prohibits in very clear and peremptory terms—*nefas est*—that not even in case of extreme necessity can one material be consecrated without the other, or the two outside the Mass.

The Eucharistic sacrifice involves the consecration of the two species.[1] The consecration of the two species, in turn, has meaning when it takes place during the memorial sacramental celebration of the cross. Because of that it would never be licit to consecrate a single species as sacrament, but it is imperative to realize the sacrifice through the transubstantiation of the two species.

However, if after the consecration, or at the time of the communion, the priest realizes that he had water (or any other liquid) instead of wine in the chalice, "leaving it in a glass, he will put wine and water in the chalice and will consecrate it while repeating the portion of the narrative that corresponds to the consecration of the chalice, without feeling obligated to repeat the consecration of the bread," as established in no. 286 of the GIRM in this event.

This procedure in no way suggests an exception to the principle formulated in the canon. Above all, there was no intention to consecrate one species without the other, only if by mistake, wine was not put in, but water or another liquid. For that reason, it is corrected by consecrating

1. Cf. *MD*, in *AAS* 39 (1947), p. 548.

only the wine, since the bread had been previously consecrated; and in any case, the same Eucharistic celebration is always made.

This exception would not be applicable in the event that the priest notices that he does not have enough species to give communion; in that case, he cannot consecrate new species because the sacrifice has already been accomplished.

928 **Eucharistica celebratio peragatur lingua latina aut alia lingua, dummodo textus liturgici legitime approbati fuerint.**

The eucharistic celebration is to be carried out either in the Latin language or in another language, provided the liturgical texts have been lawfully approved.

SOURCES: c. 819; *SC* 36, 54; *IOe* 57; SCRit Resp. ad dubia: Ad no. 57 (*Notitiae* [1965] 185–186), 98; SCRit Instr. *In edicendis normis*, 23 nov. 1965, 17–18 (*AAS* 57 [1965] 1012); SCRit Instr. *Musicam sacram*, 5 mar. 1967, 47, 48 (*AAS* 59 [1967] 314); SCRit Instr. *Tres abhinc annos*, 4 maii 1967, 2, 28 (*AAS* 59 [1967] 443, 448); GIRM 11–13; SCDW *Notif.*, 14 ian. 1971, 1 (*AAS* 63 [1971] 713–714); IOANNES PAULUS Pp. II, Litt. *Dominici cenae*, 24 feb. 1980, 10 (*AAS* 72 [1980] 134–137)

CROSS REFERENCES: c. 838 §§ 2 et 3

COMMENTARY

Enrique de León

Given the generalized use of the vernacular language in the Eucharistic celebration, it may attract attention that this canon mentions, in the first place, the Latin language even when it is placed on a par with the vernacular languages. We can find an accurate explanation to the text of the canon in nos. 11–13 and of the *Proemium* of the GIRM.

In fact, no. 11 points out that the possibility of using the language of the people in the Eucharistic celebration had already been discussed in the Council of Trent although, because of the circumstances "it did not seem appropriate to the Fathers that, as a general practice, it should be celebrated in the vernacular language."[1]

The Second Vatican Council, on the other hand—as specified in no. 12—in consideration of the didactic and pastoral character of the sacred liturgy that, although "no Catholic denies the legitimacy and efficacy of the sacred rite celebrated in Latin, it nevertheless found itself in a position to recognize that 'often the use of the vernacular language may be of great usefulness to the people' (*SC* 36) and authorized this usage." In any case, one should bear in mind the recommendations of *SC* 54 on the use

1. Cf. Council of Trent, *Sess. XXII*, ch. 8 (Dz.-Sch. 1749).

the Latin language in the Eucharistic celebration and of *GIRM 19* about singing, encouraging the faithful to learn how to sing in Latin some portions of what is usual in the Mass, since the meeting of faithful of different nationalities is increasingly more frequent.

Whether the Latin or vernacular language is used, what the canon wants to preserve is the fidelity to what is prescribed in the legitimately approved liturgical text. It is also pointed out in *SC* 22: "no one can add, delete or change anything on his own initiative."

These comments notwithstanding, the approval of the liturgical texts in the vernacular language executed by the bishops' conferences corresponds to the Holy See according to what is determined in c. 838 §§ 2 and 3.

929 **Sacerdotes et diaconi in Eucharistia celebranda et ministranda sacra ornamenta rubricis praescripta deferant.**

In celebrating and administering the Eucharist, priests and deacons are to wear the sacred vestments prescribed by the rubrics.

SOURCES: cc. 811 § 1, 818; SCRit Instr. *Praeter calicem*, 28 ian. 1920; SCRit Resp., Dubium, 9 dec. 1925 (*AAS* 18 [1926] 58–59); SCRit Decl., 20 aug. 1957 (*AAS* 49 [1957] 762); IOANNES Pp. XXIII, m. p. *Rubricarum instructum*, 25 iul. 1960 (*AAS* 52 [1960] 593–595); SCRit Decr. gen. *Novum rubricarum*, 26 iul. 1960, 117–137 (*AAS* 52 [1960] 617–621); SCRit *Ritus servandus in concelebratione Missae*, 7 mar. 1965, 12 (*AAS* 57 [1965] 412); SCRit Instr. *Tres abhinc annos*, 4 maii 1967, 25–27 (*AAS* 59 [1967] 447–448); SCRit Instr. *Pontificales ritus*, 21 iun. 1968, 5, 6 (*AAS* 60 [1968] 408); SCDW Instr. *Actio pastoralis*, 15 maii 1969, 11b (*AAS* 61 [1969] 811); GIRM 298–300, 302; HCW 24; IOANNES PAULUS Pp. II, Litt. *Dominici cenae*, 24 feb. 1980, 12 (*AAS* 72 [1980] 144–145)

CROSS REFERENCES: c. 831 § 1

COMMENTARY

Enrique de León

The canon's generic formulation about the obligation to wear the sacred vestments prescribed by the rubrics is specified in nos. 297 to 310 of the GIRM.

In the first of these an account is given of the diversity of the existing ministries in the development of the sacred worship, with a corresponding diversity of sacred vestments that constitute a distinguishing feature of the role that each minister fulfils, and at the same time contribute to the decorum of the sacred act itself.

In the following six numbers, 298 to 303, there is a detailed description of each of the vestments that must be used in the Eucharistic celebration. These are specifically:

— an "alb," which is girded around the waist with the cincture, unless because of its make it will adhere to the body without the need for a cincture;

— an "amice," which must be used if the alb does not entirely cover the customary clothing around the neck;

— a "stole," which the priest wears around the neck, hanging in front of the chest, whereas the deacon wears it crosswise, from the left shoulder, passing across the chest towards the right side of the torso to which it is fastened;

— a "chasuble," which is the proper vestment of the celebrant priest, during the Mass and the acts directly related to it. It is worn over the alb and the stole;

— a "dalmatic," clothing proper to the deacon that, like the chasuble, is worn over the alb and the stole;

— a "cope" that the priest must wear in processions and other sacred acts, according to the rubrics of each particular rite.

The ministers other than the deacon may only wear an alb or another vestment legitimately approved in each region.

In nos. 304–310 the colors that the vestments must have in each case are indicated, and their objective is stressed: to express with greater efficacy, even externally, both the characteristics of the mysteries of the faith being celebrated as well as the progressive meaning of Christian life throughout the liturgical year.

930 **§ 1. Sacerdos infirmus aut aetate provectus, si stare nequeat, Sacrificium eucharisticum celebrare potest sedens, servatis quidem legibus liturgicis, non tamen coram populo, nisi de licentia loci Ordinarii.**

§ 2. Sacerdos caecus aliave infirmitate laborans licite eucharisticum Sacrificium celebrat, adhibendo textum quemlibet Missae ex probatis, adstante, si casus ferat, alio sacerdote vel diacono, aut etiam laico rite instructo, qui eundem adiuvet.

§ 1. A priest who is ill or elderly, if he is unable to stand, may celebrate the eucharistic Sacrifice sitting but otherwise observing the liturgical laws; he may not, however, do so in public except by permission of the local Ordinary.

§ 2. A priest who is blind or suffering from some other infirmity, may lawfully celebrate the eucharistic Sacrifice by using the text of any approved Mass, with the assistance, if need be, of another priest or deacon or even a properly instructed lay person.

SOURCES: § 1: *PM* I, 10; *CAd* I, 5
§ 2: *PM* I, 5 et 6; *CAd* I, 2; SCRit Instr. *Tres abhinc annos*, 4 maii 1967, 18 (*AAS* 59 [1967] 446)

CROSS REFERENCES: c. 906

COMMENTARY

Enrique de León

1. From the first paragraph of the present canon it is inferred that the priest, while

celebrating the Holy Mass, must ordinarily remain standing, demonstrating with his posture the respect and reverence due to that sacred act. A priest who is ill or elderly, if he is unable to stand, may celebrate the Eucharistic sacrifice sitting, but without public attendance.

It is clear that if the priest remains seated throughout the entire Mass, he will not be able to execute some of the gestures and rubrics prescribed in the liturgical norms, such as bowing, genuflections, etc. And for this reason it is desirable not to celebrate the Mass in public to avoid the amazement or perplexity the faithful might experience. Only with permis-

sion from the ordinary of that place can he celebrate in public. In any case the canon reminds us that the liturgical laws should always be observed.

2. Also, in the case of a priest who is blind or suffering from some infirmity, § 2 prescribes the possibility of celebrating the Holy Mass using an approved text which the celebrant, by familiarity, knows from memory without compromising the due respect, attention and observance of the liturgical norms.

Furthermore, the possibility of assistance from another priest or deacon, or a properly instructed layperson, is also considered. To this effect *PM* 5 envisaged the possibility of the bishop authorizing the daily celebration of the votive mass of the Virgin or of the dead to those priests suffering a weakening of their visual powers or a similar infirmity; this amounts to anything resulting in a difficulty in reading the missal.

Evidently, the assistance alluded to in § 2 of the canon may become indispensable in the case of total or nearly total blindness for the purpose of executing the movements for which eyesight is necessary: to pour the wine and the water in the chalice, purifications, etc.

The requirement that, except with permission from the ordinary, the priest should not celebrate in public, does not seem to be applicable to the priest who is blind or who suffers from another infirmity. This is provided he can celebrate the Holy Mass standing, because only the impossibility of standing during the Eucharistic celebration constitutes, as a rule, the condition established by the legislator for the faithful not to attend.

ART. 4
De tempore et loco celebrationis Eucharistiae

ART. 4
The Time and Place of the Eucharistic Celebration

931 **Eucharistiae celebratio et distributio fieri potest qualibet die et hora, iis exceptis, quae secundum liturgicas normas excluduntur.**

The celebration and distribution of the Eucharist may take place on any day and at any hour, except those which are excluded by the liturgical laws.

SOURCES: cc. 820, 821, 867; SCDS Resp., 22 apr. 1924 (*AAS* 17 [1925] 100–106); PIUS Pp. XII, Ap. Const. *Christus Dominus*, IV, 6 ian. 1953 (*AAS* 45 [1953] 22–23); SCHO Decr., 31 maii 1953 (*AAS* 45 [1953] 426); CodCom Resp., 5 mar. 1954; SCHO Monitum, 22 mar. 1955 (*AAS* 46 [1957] 218); SCRit Decr. gen. *Maxima redemptionis*, 16 nov. 1955 (*AAS* 47 [1955] 838–841); SCRit Ordinationes et Decl., 1 feb. 1957 (*AAS* 49 [1957] 91–95); PIUS Pp. XII, m. p. *Sacram communionem*, 19 mar. 1957, 1 (*AAS* 49 [1957] 178); *PM* I, 4; *CAd* I, 1; SCB *Index facultatum*, 1 ian. 1968, 27

CROSS REFERENCES: cc. 904, 918

COMMENTARY

Enrique de León

Canons 931–933 are contained in the statement "The Time and Place of the Eucharistic Celebration"; of those, only this first canon refers to time, and it does so in a generalized style that has to be condensed, resorting to other more precise norms enumerated among the sources of this canon.

Canon 931 not only envisages the case of the celebration, but also that of the administration of the Eucharist, because the said administration may also be done outside the Eucharistic celebration, even though it constitutes the common framework of its distribution.

Summarizing briefly the diverse prescriptions concerning this, it may be said that there are basically the following exceptions to the general principle stated above:

— Holy Thursday: The chrism Mass is celebrated by the bishop in the morning, usually in the cathedral, and is the only one in the entire diocese. For pastoral reasons that facilitate the priests' concelebration of the chrism Mass with their bishop, it may be celebrated prior to Holy Thursday. In the afternoon the Mass is celebrated in *Cena Domini* in the cathedral and in the parishes. In both cases the time will be that which is pastorally most convenient. Besides these two Masses, the local ordinary may permit the celebration of another evening Mass—and in the morning in case of real need—both in churches and in oratories, for the people who could not take part in the Mass in *Cena Domini*. As for communion, it may only be administered within one of the two Masses. However, for the sick, it may be taken to them at any time.

— Good Friday: The Eucharist is not celebrated on this day as it happens to be a non-liturgical solemnity. Communion may be administered, however, only during the evening services, and may be taken to the sick at any time.

— Holy Saturday: As such, it is also a non-liturgical day. But at night, the Easter Vigil is celebrated, which only for pastoral reasons may be advanced to the evening, preferably not before sunset. As for communion, on Holy Saturday and before the Easter Vigil, it can only be received in the form of viaticum.

932 **§ 1. Celebratio eucharistica peragatur in loco sacro, nisi in casu particulari necessitas aliud postulet; quo in casu, in loco honesto celebratio fieri debet.**

§ 2. Sacrificium eucharisticum peragendum est super altare dedicatum vel benedictum; extra locum sacrum adhiberi potest mensa conveniens, retentis semper tobalea et corporali.

§ 1. The eucharistic celebration is to be carried out in a sacred place, unless in a particular case necessity requires otherwise; in this case the celebration must be in a fitting place.

§ 2. The eucharistic Sacrifice must be carried out at an altar that is dedicated or blessed. Outside a sacred place an appropriate table may be used, but always with an altar cloth and a corporal.

SOURCES: § 1: c. 822 §§ 1 et 4; *PM* I, 7 et 8; *CAd* I, 4; SCDW Instr. *Actio pastoralis*, 15 maii 1969, 3, 4 (*AAS* 61 [1969] 808); GIRM 253, 260; SCDF Instr. *Liturgicae instaurationes*, 5 sep. 1970, 9 (*AAS* 62 [1970] 701–702); *DPMB* 85; SCDW *Directorium de Missis cum pueris*, 1 nov. 1973, 25 (*AAS* 66 [1974] 38)
§ 2: c. 822; CodCom Resp. 12, 16 oct. 1919 (*AAS* 11 [1919] 478); SCDS Litt., 26 iul. 1924 (*AAS* 16 [1924] 370–371); SCDS Resp. *Romana et aliarum*, 3 maii 1926 (*AAS* 18 [1926] 388–391); SCDS Instr. *Dominus salvator noster*, 26 mar. 1929 (*AAS* 11 [1929] 631–642); SCRit Decr., 12 mar. 1947; SCDS Instr. *Quam plurimum*, 1 oct. 1949 (*AAS* 41 [1949] 501–506); CodCom Resp. IV, 26 mar. 1952 (*AAS* 44 [1952] 497); GIRM 260

CROSS REFERENCES: cc. 1205, 1214, 1223, 1226, 1227, 1230, 1235–1239

COMMENTARY

Enrique de León

1. In keeping with the dignity of the Eucharistic celebration, the place where it is carried out must be, as indicated in the canon, sacred. But in order to know what is meant by sacred place, and what place or places must be considered, we have to refer to c. 1205, wherein the requirements to be met are specified.

In the first place it is required that the place be set aside for divine worship by the appropriate authority in each case and, furthermore, that the place be dedicated or blessed as prescribed in the liturgical books.

Usually the church (c. 1214), the oratory (c. 1223), the private chapel (c. 1226), the bishop's private chapel (c. 1230), and the sanctuary (c. 1230) will be the only appropriate places to celebrate the Eucharist with the dignity that the sacrament requires (GIRM 253). But the canon also considers, in its first paragraph, the possibility that in any particular case necessity may require something else; which means that the Eucharistic celebration, away from the sacred place, must be considered of an exceptional nature and, in any case, an honest and dignified place must be selected.

As implied in the canon, it is not necessary to go to the local ordinary in each specific case, but we understand that authorization must indeed be requested when the Eucharistic celebration is routinely carried out away from a sacred place.[1]

2. Specifically pointed out in several dispositions outside the text of the Code—a reference that may not necessarily be considered *numerus clausus*—are certain places which absolutely do not meet the adequate conditions of decorum and dignity. Among them is the bedroom[2] as well as the dining room and the dining table.[3] These places have to be regarded as forbidden for the Eucharistic celebration.

Nonetheless the said prohibition does not include the room of a sick person, whether in a health center or in his home, since RA, *Praenotanda* 26 recommends that the viaticum be received during Mass.[4] *Pastorale Munus* 7, which had already considered the possibility of the Mass being celebrated away from a sacred place, although with permission of the diocesan bishop, had also contemplated the possibility of authorizing a sick or aged priest to celebrate in his home every day, but not in his bedroom.

3. In the second paragraph reference is made to the altar or place whereupon the holy sacrifice must be carried out, both in a sacred place and away from it. If it is in a sacred place, it must have been dedicated or blessed and must meet the characteristics indicated in cc. 1235–1239.

Away from the sacred place, the Eucharist may be celebrated on an adequate table which must be covered by a tablecloth with a corporal, properly spread out, to make it possible to put on it the bread and the chalice for the consecration (cf. GIRM 259, 260, and 266). Nowadays the use of the altar slab is no longer required. For additional particulars regarding the altar, see commentary on cc. 1235 to 1239.

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1. Cf. *Comm.* 15 (1983), p. 197 ad 884 §1, nos. 1–2.
2. Cf. *PM*, 7; SCDW, Instr. *Actio pastoralis*, May 15, 1969, no. 4, in *AAS* 61 (1969), p. 808.
3. Cf. SCDW, Instr. *Liturgicae instaurationis*, September 5, 1970, no. 9, in *AAS* 62 (1970), p. 701.
4. Cf. *Ritual de la Unción y Pastoral de Enfermos. Orientaciones doctrinales y pastorales del Episcopado español*, nos. 50e, 64b-c, 80, and 108.

933 **Iusta de causa et de licentia expressa Ordinarii loci licet sacerdoti Eucharistiam celebrare in templo alicuius Ecclesiae aut communitatis ecclesialis plenam communionem cum Ecclesia catholica non habentium, remoto scandalo.**

For a good reason, with the express permission of the local Ordinary, and provided scandal has been eliminated, a priest may celebrate the Eucharist in a place of worship of any Church or ecclesial community which is not in full communion with the catholic Church.

SOURCES: c. 823 § 1

CROSS REFERENCES: c. 844

COMMENTARY

Enrique de León

The norms of the *CIC* pertaining to the "communication in sacred things and sacred places" presupposed a great change in regards to what *CIC*/1917 established, which prohibited it in an absolute way.

Vatican Council II anticipated the possibility of *communicatio in sacris* with the brothers of the separated Eastern Rite Churches, providing it does not offend the unity of the Church or involve formal adhesion to error, or the danger of error in the faith, of scandal or indifference, and on the other hand contributes to the salvation and the spiritual well-being of the souls (cf. *OE* 26). According to these principles *Orientalium Ecclesiarum* 28 permitted *communicatio in sacris* whenever there was just cause. Later, these principles enunciated by the Second Vatican Council were specifically expressed in the Directory *Ad totam Ecclesiam*, of May 14, 1967,[1] which deals with *communicatio in sacris* with the separated Eastern Rite Churches (nos. 39ff) and with non-Catholic ecclesial communities (nos. 55ff).

As for the specific fact about celebration of the Eucharist in the temple of a Church or Eastern Rite community that is not in full communion with the Catholic Church, the first requirement is a just cause, but demands additionally the express permission of the local ordinary and

1. Cf. *AAS* 59 (1967), pp. 574–592.

avoidance of the possibility of scandal that this action might provoke. Although the canon does not make any specific distinction between the separated Eastern Rite and non-Eastern Rite Churches, it is reasonable to assume that the required just cause will not be so serious in the case of the former as it would be for the latter with what is established in c. 844 about *communicato in sacris* in the administration of the sacraments.

CAPUT II
De sanctissima Eucharistia asservanda et veneranda

CHAPTER II
The Reservation and Veneration of the Blessed Eucharist

934 **§ 1. Sanctissima Eucharistia: (1) asservari debet in ecclesia cathedrali aut eidem aequiparata, in qualibet ecclesia paroeciali necnon in ecclesia vel oratorio domui instituti religiosi aut societatis vitae apostolicae adnexo; (2) asservari potest in sacello Episcopi et, de licentia Ordinarii loci, in aliis ecclesiis, oratoriis et sacellis.**

§ 2. In locis sacris ubi sanctissima Eucharistia asservatur, adesse semper debet qui eius curam habeat et, quantum fieri potest, sacerdos saltem bis in mense Missam ibi celebret.

§ 1. The blessed Eucharist:
- 1° must be reserved in the cathedral church or its equivalent, in every parish church, and in the church or oratory attached to the house of a religious institute or society of apostolic life;
- 2° may be reserved in a Bishop's chapel and, by permission of the local Ordinary, in other churches, oratories and chapels.

§ 2. In sacred places where the blessed Eucharist is reserved there must always be someone who is responsible for it, and as far as possible a priest is to celebrate Mass there at least twice a month.

SOURCES: c. 1265; CodCom Resp., 7, 20 maii 1923 (*AAS* 41 [1949] 508–511); *PM* II, 5

CROSS REFERENCES: c. 351 § 1, 515 §§ 1–2, 555 § 1,3°, 608, 611,3°, 733 § 2, 938 §§ 3–5, 939, 940, 1206, 1207, 1215 §§ 1 et 3, 1217, 1219, 1225, 1227, 1228

COMMENTARY

Juan Ignacio Bañares

1. The first paragraph of this canon divides the places in which the Holy Eucharist must be reserved depending on whether the reservation was directed by the law itself or simply facilitated by it. In the first case there are five categories: the cathedral church; a church equivalent in law to a cathedral church; the parish church; the church or oratory attached to the house of a religious institute; and the church or oratory attached to the house of a society of apostolic life.

a) As regards the church as such, it is understood that the dedication ceremony—or at least the blessing—of the building following the liturgical laws (c. 1217) makes possible the initiation of the acts of divine worship (c. 1219). The dedication of a sacred place belongs to the diocesan bishop and to those who are equivalent to him in law (c. 1206); and the benediction of the churches is also reserved to the diocesan bishop (c. 1207).

As for the church equivalent in law to the cathedral, neither a definite concept nor specific requirement (or even mention of the term) is found in the Code or in the liturgical documents, but c. 1265 § 1,1° of the *CIC*/1917—quoted by the legislator as the immediate source of the present canon—mentioned the principal church of the abbeys and apostolic prefectures. As for the parish, it is defined as the community of faithful, and their well-being is assigned to a priest (c. 515 § 1). The parish church is the one that has been designated as the see of the parish by legitimate decree which belongs to the diocesan bishop (c. 515 § 2). Ordinarily that designation will be made in the erection decree itself, but nothing interferes, for example, with the material see of a parish being transferred from one church to another.

According to the text of the Code, the duty to reserve the Eucharistic in quasi-parishes must be understood: in fact, on the one hand the text of the canon on which we are commenting, although it does not expressly speak of equivalence when referring to the parish, says "in *qualibet* ecclesia paroeciali". Canon 516, on the other hand, points out in § 1 "unless the law provides otherwise, a quasi-parish is equivalent to a parish," and, in fact, it does not seem that the law intends something else. Furthermore, the equivalent canon of the *CIC*/1917 (c. 1265 § 1,1°) expressly referred to quasi-parish churches. On the other hand, an equivalency, such as mentioned, expressly made for the attention of the faithful whenever for specific circumstances a parish cannot be erected (c. 516 § 2), would not make very much sense if it did not include the command of c. 934.

The Code also requires that each house of a religious institute have at least an oratory "in which the Eucharistic is celebrated and reserved, so

that it may truly be the center of the community" (c. 608). To erect the new house it is enough to have the diocesan bishop's consent and from it follows *ipso iure* the right to have a church (c. 611,3°), although this permission is independent of the one required to *erect* a church. (c. 1215 § 3). In the same way, the permission of the diocesan bishop to build a house for a society of apostolic life "carries with it the right to have at least an oratory in which the blessed Eucharistic is celebrated and reserved" (c. 733 § 2).

b) In the second part, about the places where the Eucharist *may* be reserved, there are two supporting inferences. In the first place the bishop's right to have a private chapel which is the equivalent of an oratory is expressly affirmed in c. 1227. Inasmuch as the Code does not establish any other requirements, to have received the episcopal ordination will be the exclusive and excluding one, and on the other hand, it will not be relevant if he is auxiliary, titular or emeritus. The faculty granted by *PM* II, 5, which permitted the resident and regular bishop to "reserve the Blessed Eucharist in his home's oratory" thus becomes expanded. However, this right could not be exercised, for example, by a priest already appointed cardinal by the Roman Pontiff, who has not yet received the episcopal ordination ordained by c. 351 § 1.

In the second part it is established that with appropriate permission the Eucharist *may* also be reserved in other churches, oratories and chapels: that permission is a prerogative of the local ordinary. The three terms employed comprise all of the sacred places set aside for divine worship. The difference between oratories and chapels lies in that in the former, once they are legitimately constituted, all of the sacred celebrations may in principle take place (c. 1225), whereas in the latter the specific express permission of the local ordinary is required (c. 1228), which could be included in the same permission given for the establishment of the chapel and be issued in general terms or for a specific time period or circumstances.

In any case, *may* in the text of the Code does not indicate only that only such sacred places are suitable—in this case—for keeping the Eucharistic reservation but also that they can also exist without that permission and, therefore, without having the reservation of the holy sacrament. Thus, although the lawful dedication or blessing of churches (c. 1219) or the lawful constitution of oratories (c. 1225) qualifies for all the acts of worship, they cannot on that account dispense with the specific permission to which reference is made in the canon we commented on, which is, therefore, different from the previous one. This set of norms simplifies those of c. 1265 of the *CIC*/1917, while expanding the authority of the local ordinary, since in the latest cases—the one about "other churches or oratories"—the apostolic indult was needed, and the ordinary would only grant his permission in the case of churches or public oratories for just cause and individual occasions (ibid.).

c) The Eucharist may also be reserved in other places with prior indult from the Apostolic See. This was contained, for example, in a decree of the PCPCMIP that facilitated the indult for reserving the Eucharist in legitimately erected oratories in the naves; thus, in these cases a difference is likewise made between the erection of the oratory and the authority to reserve the holy sacrament.[1] In 1982, in view of the foregoing experience, the same Code Commission decided to gather—once it had heard the opinion of the competent dicasteries of the Roman Curia—the privileges and faculties that had been granted and extend them to all the chaplains and faithful. Among these faculties was that of reserving the Holy Eucharist in the naves and "caravans" (*sic*).[2]

2. Paragraph 2 establishes two norms on the subject. In principle it prescinds the types of places where the Eucharist is reserved; it refers solely to the reserve itself in any *sacred place.* Nonetheless, this principle must be nuanced since special assumptions may exist, for example, that of the reserve in a "caravan" in which the *dignified and secure* place where it is kept is not located in a "sacred place" (oratory or chapel). Still, it is obviously within the obligation to have someone caring for it, as the recently mentioned decree explicitly contends. This decree established that very circumstance for the existence of the faculty to reserve the Eucharist, even by using the same words in the canon we commented on (inherited from the old c. 1265 § 1 *CIC*/1917): "dummodo adsit qui eius curam habeat."[3] Already by the year 1969, an instruction from the SCB about the pastoral care of emigrants instructed the delegate about his obligation to see that the decorum and splendor of sacred places and ornaments be observed, especially (*maxime*) in the custody f the holy sacrament and in the Eucharistic celebration.[4] These words (originating in *CIC*/1917, cc. 447–449) have passed verbatim to the contents of the present c. 555 § 1,3°, which contains the rights and duties of the archpriest or vicar forane: to them befell a special care in regards to that subject, in terms of their respective *vicariate forane.*

a) The first norm is therefore valid at any time and in every place and points to the obligation to have someone at all times to care for the holy sacrament. On the one hand, it seems that it should be placed in relation to the directives of c. 938 §§ 3–5 about the security of the Eucharist and the custody of the key to the tabernacle. On the other hand, it seems that it goes beyond the strictly physical security: in fact, the *curam habere* suggests something more than the mere *custodire.* Attention to the dignity of

1. Cf. Decr. *Apostolatus Maris*, Pars II, I, 7, issued by the PCPCMIP and the SCB, together with some norms and privileges together, September 24, 1977: *AAS* 69 (1977), p. 746).
2. Cf. PCPCMIP, Decree regarding faculties and privileges of chaplains and faithful in generall, March 19, 1982, n I, 4: *AAS* 74 (1982), pp. 742–743).
3. Ibid., p. 743.
4. Cf. Instr. *De cura pastorali migratorum*, August 22, 1969, no. 47, §1: *AAS* 61 (1969), pp. 636–637).

the place should also be understood: from cleanliness and decorum to the periodic replacement—when necessary—of the lamp that must burn continuously before this place of reserve (c. 940). It is also possible that the legislator is considering those cases in which the priest does not live in the places, but only goes there sporadically; in those circumstances the canon seems to demand the presence of a person or group expressly charged with that which has to do with the Eucharistic reserve. Therefore, at least a portion of the task of caring for the reserved Eucharist may be entrnsted to any faithful suitable for that task; what it prohibits is not having anybody with the specific mission of giving such care.

Very special attention is required in the case of a place used by several religious confessions (in succession of course, not simultaneously). The Secretariat for Promoting Christian Unity has pointed out that those centers for interconfessional worship should be exceptional and respond to needs that cannot otherwise be met (for example, in the case of an airport or military installation, especially in those countries with a higher rate of interdenominationalism), and it has specifically been pointed out that in such cases judicious attention must be given to the subject of the Eucharistic reserve, which—without hurting other sensitivities—should be in harmony with a sound sacramental theology.[5]

b) The second norm of § 2 dictates that in those places the Mass should be celebrated at least twice a month. This precept is consonant with the one established in c. 939 which demands that consecrated forms be *frequently* renovated, the more so, since here it is said *saltem bis* it would seem better in order to comply with the instructions of both canons, that it should be celebrated three or four times a month, so that they could be renewed every week or every ten days. It may also be understood that the legislator wishes that as much as it is possible, the Mass should be celebrated frequently in the sacred place where the Eucharist is reserved because, if the reserve has as a mission the worship of the Eucharist outside the Eucharistic sacrifice, it would be perfectly desirable for the same community to be able to attend the Mass. Additionally in this fashion, the unity existing between Eucharist-sacrifice, Eucharist-communion, and Eucharist-presence is emphasized without confusing them. *CIC*/1917 (c. 1265 § 1) established the obligation to celebrate Mass regularly at least once a week, but in fact the Holy See used to authorize the extension of the term to a maximum of fifteen days when there was a shortage of priests.

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5. Cf. SPCU, "Notas Directivas sobre la Cooperación Ecuménica, February 22, 1975," published in *Service d'information* of the Secretariat 26 (1975/I), pp. 10–34.

935 Nemini licet sanctissimam Eucharistiam apud se retinere aut secum in itinere deferre, nisi necessitate pastorali urgente et servatis Episcopi dioecesani praescriptis.

It is not lawful for anyone to keep the blessed Eucharist in personal custody or to carry it around, unless there is an urgent pastoral need and the prescriptions of the diocesan Bishop are observed.

SOURCES: c. 1265 § 3

CROSS REFERENCES: cc. 134 §§ 2–3, 368, 381 § 2, 529 § 1, 530,3°, 934, 938 §§ 4–5, 940

COMMENTARY

Juan Ignacio Bañares

1. This canon incorporates, in the statement of the general principle, the entire text of c. 1265 § 3 *CIC*/1917 and after that adds *ex novo* the conditions for making an exception. The principle that prohibits the keeping or carrying of the Eucharist is an immediate and logical consequence of what is established in c. 934, which determines the requirements established for the reservation of the Eucharist.

The fact that it has been separated and made into a new and independent canon shows, on the one hand, the division of the subject from two perspectives: c. 934 indicates the places where the holy sacrament can be reserved and its requirements as to *place*; c. 935 refers directly to *persons*, and the prohibition encompasses both the conservation of the Eucharist at home and the carrying it around.

On the other hand, the separation of the two canons underlines the importance of this general principle, displaying—if such a thing is possible—a singular firmness, as a principle and not as a mere appendix that concludes the regulation about the places for reserving the Eucharist. It is thereby clearer that the central theme is just that, the Eucharistic reserve treated from the two possible perspectives: places and subjects. As for the rest it adds to the foregoing canon a dynamic dimension pertaining to travel (from the standpoint of the subject) and, as a result, with carrying it around (from the standpoint of the Eucharist).

The exception to this prohibition divides itself into two conditions. The first establishes the requirement of pastoral necessity. Therefore, in principle, exceptions would not apply for the purpose of satisfying personal piety about Eucharistic worship, or of receiving communion on

successive dates (the case of a priest far away from a church who is not going to be able to celebrate Mass for sometime; or that of a deacon who travels in areas where there are no churches, etc.).

Additionally, the need must be *pressing*. Hence it cannot be interpreted as a necessity that occurs in habitual or ordinary circumstances; in fact, the term "urgency" appears to call for the presence of an imminent feature of necessity, and one of a particular seriousness. Pastoral necessity is not directly established either by a specific number of faithful, or by a specific duration; however, as the necessitating community becomes larger and a foreseeable time period elapses until circumstances return to normal, obviously it would be easier to recognize the necessity as well as its quality of urgency.

The second condition established by this canon demands compliance with the norms prescribed for such cases by the diocesan bishop. This presupposes that it is not necessary to apply for permission *ad casum* from the diocesan bishop, among other things because the urgency itself may complicate the procedure. Rather, it appears more as an invitation to the diocesan bishops to adopt the required norms, even though the norms by themselves could in turn create the necessity for requesting permission on each occasion, for example when, because of circumstances peculiar to a diocese, it is anticipated that only very occasionally could that urgency occur.

In any case, it seems reasonable that the Code defers to the authority of the diocesan bishop: in the first place, because he is the prime authority in the diocese; in the second place, because a judicious evaluation of the circumstances that suggest the exception usually will vary considerably from one diocese to another; in the third place, because no one knows the peculiarities of the diocese better than the diocesan bishop; and in the fourth place, because permission to reserve the Most Holy Eucharist is the function of the local ordinary, and since the concept of local ordinary is more comprehensive than that of diocesan bishop (c. 134 §§ 2–3), it is reasonable for the exception to be more restricted. According to c. 134 § 3 regarding 381 § 2 and 368, the equivalents in law to the diocesan bishop are those who preside over a territorial prelature and a territorial abbey, an apostolic vicariate and apostolic prefecture, or an apostolic administration erected in a stable fashion, but not the general and episcopal vicar, unless they have a special mandate.

On the other hand, the two mentioned conditions are cumulative—not alternative—and, therefore, neither of them by themselves would be sufficient to justify the exception. Therefore, it seems that the diocesan bishop himself is not empowered to grant that permission without a pressing pastoral necessity, but it behooves him to pass judgment on the concept, requirements and the application *in casu* of that necessity. If there were no diocesan norms in this regard, then it would be necessary to turn to the bishop of the diocese and request his permission. If there were

norms and they empowered the sacred ministers about this reserve or transfer of the Eucharist in specific circumstances, the sacred minister would have to yield to judicious reasoning as to whether or not the situation falls within the stated conditions. Attention to the norms not only covers the possible general criteria that the bishop might generally establish in order to determine whether the exception is appropriate; but it may also refer to the compliance with the norms that the diocesan bishop could have established for carrying out—in those cases—the reserve or the transfer of the Eucharist.

There are also some exceptions to be considered directly by universal law. The first of these has to do with the authority granted to every bishop to reserve the Eucharist in his private chapel (c. 934 § 1,2°); attention to the sick and the consequent administration of the Eucharist, which generally will not be a question of traveling but of a mere transfer for short distance (cc. 529 § 1 and 530,3°; RA)[1]; and common pastoral cases that nonetheless, because of their circumstances, are specifically considered by the ecclesiastic authority as needing some special prerogatives. In these possible events there are some norms for the care of immigrants and navigators which grant the respective chaplains authority to reserve the Eucharist in ships and "caravans." In these cases the existence of a sacred place is not required—which is a different subject, and could happen, for example, in some ships—but indeed the reserve must be made in a dignified place, exercising due caution, and always relying on the presence of someone capable of caring for it, and observing the obligation to see that the special lamp signaling the presence of the holy sacrament is not missing[2] (see cc. 934, 938, 940 and their respective commentaries). In this regard, these requirements can serve as guidelines for the diocesan bishops themselves since, in the final analysis, they are responsible—in these extraordinary cases—for guaranteeing the minimum security of the reserved sacrament, the dignity and decorum of the place, and the attention and care of the material aspects associated with that reservation.

1. Cf. also JOHN PAUL II, Letter *Dominicae Cenae*, February 24, 1980, no. 3: *AAS* 72 (1980), p. 118.
2. Cf. PCPCMIP, Decree regarding faculities and privileges of chapelins and faithful in general, March 19, 1982, no. I, 4: *AAS* 74 (1982), pp. 742–743.

936 **In domo instituti religiosi aliave pia domo, sanctissima Eucharistia asservetur tantummodo in ecclesia aut in oratorio principali domui adnexo; potest tamen iusta de causa Ordinarius permittere, ut etiam in alio oratorio eiusdem domus asservetur.**

In a house of a religious institute or other house of piety, the blessed Eucharist is to be reserved only in the church or principal oratory attached to the house. For a just reason, however, the Ordinary can permit it to be reserved also in another oratory of the same house.

SOURCES: c. 1267; CodCom Resp. 5, 2–3 iun. 1918 (*AAS* 10 [1918] 346–347)

CROSS REFERENCES: cc. 608, 611,3°, 733 § 2, 934, 938, 941, 942, 1215 § 3; 1223, 1226

COMMENTARY

Juan Ignacio Bañares

1. The assumption that gives rise to this canon is that the house of a religious institute or other *house of piety* has the permission necessary for having more than one oratory or church. In this subject matter several principles are at work, in the first place the obligatory nature of having the sacred Eucharist reserved. If it is the house of a religious institute, each house must have at least a church or oratory where the blessed Eucharist is celebrated and reserved (cf. c. 608). On the other hand, there is no canon that imposes on each of the houses of the societies of apostolic life the explicit obligation to have a sacred place where the Holy Mass may be celebrated and the holy sacrament kept; hence, specific mention of it is also unnecessary in c. 936. However, the bishop's consent to erect a house of a society of apostolic life "has attached to it the right to have at least an oratory in which the blessed Eucharist is celebrated and reserved" (c. 733 § 2).

In the second place, the principle regarding the required permission for the oratory or church and to celebrate—and reserve—the blessed Eucharist is at work; in reference to this it must be said that the consent of the diocesan bishop to erect the appropriate house carries with it the right to have at least an oratory, and to use it under the conditions we are discussing. In the case of the religious institutes, if it is a clerical institute the consent of the diocesan bishop to erect a house grants the right to a

church (cf. c. 611,3°). As for the societies of apostolic life, the diocesan bishop's consent makes it feasible, as we have seen, "to have at least an oratory." It seems, therefore, that in this case, the decision about the erected house having available a *church* in the strict sense depends on the wishes of the society of apostolic life itself and on the discretion of the diocesan bishop (c. 733 § 2). As for the rest, the term *saltem* used in the canon does not convey evidence of restriction; rather, it evinces the desire that the established minimum will be surpassed. In conclusion, whether an oratory or a church is available, it will probably depend on the function that it could assume in the context in which the house is situated and on the cooperation that its members may succeed in developing with the work of ordinary diocesan care. Nothing would prevent—on the contrary—the fact that while the diocesan bishop is communicating in writing his consent for the erection of the house, he may also be extending in writing the specific permission for a church attached to it. What the legislator of the quoted canons does intend is that no house legitimately erected be impeded from having the Eucharist reserved. In the canon that we are now commenting on it is indirectly stressed, as a contrast, that as a general criterion, the Eucharist be prohibited from being reserved in more than one place in the house.

The third principle that must be taken into account is that the diocesan bishop's consent to which we make reference is different from the permission needed for the building of a church in the sense of c. 1215, § 3.

2. As for the expression *house of piety*, it must be understood, in the first place, that it means only a house—the material and immovable seat—that has permission to have a sacred place to celebrate and reserve the blessed Eucharist (with the restriction we will mention forthwith). This will exclude other types of places where the Eucharistic reservation may exceptionally take place. Secondarily, *of piety* is there to indicate that, for a private house, it is not a question of permission to reserve, as in, for example, a private chapel assigned for divine worship for the convenience of one or more individuals (c. 1226). In this canon, it is not a question of just any house with a place set aside for worship, but of a house set aside in its entirety for a pious activity. In fact, it is a house that is not for private use—strictly speaking—which does not depend on one or more persons as such, but rather a house of an institution of piety which could be a religious institute or, as we have seen, a society of apostolic life or another invested with legitimacy. The permission of the ordinary is required in order to establish an oratory (c. 1223).

3. In general, in regards to the permission for reserving the blessed Eucharist, see c. 934 and its commentary. The general criteria discussed in c. 936 stipulate that the reservation of the Eucharist will be done only in one of the sacred places that these houses of piety may have. One assumes that it would not be inappropriate for there to exist in these houses some type of church or oratory. In these cases the text of the Code points

out that the reserve must take place only in the church or in the principal oratory attached to the house. The term "principal oratory," as well as the basic contents of the canon, is taken from c. 1267 of the *CIC*/1917. The *principality* of the oratory, if it had not been specifically established, could be inferred as a de facto matter, that would have been determined—there being nothing against it—by the house itself, the conditions of the occasional oratories in existence, and the use and customs of the institution in question. Actually, since this principle has already been in effect for some time, in actual practice the opposite will happen: the principality will be determined by the reserve of the Holy Eucharist as soon as the oratory where it will take place is selected.

In the light of a reply of 1918,[1] that has been collected as one of the sources of the canon, its overall meaning must be understood as follows: when one of the houses mentioned uses for its habitual practices of piety a public church attached to the same house, then the Holy Eucharist can only be reserved in that church. If the church is not used, the Eucharist may be reserved in the principal oratory of the house. And, in any case, the Eucharist should only be reserved in one oratory, except in cases of religious or pious houses which, although in terms of construction are considered one residence, are actually divided up into formal and distinct sections.

4. The text of the present canon adds to that of the old Code the possibility of an exception to this general criterion. The competent authority for permitting the Holy Eucharist to be reserved in a different oratory of the same religious house or house of piety is the ordinary. The required prior condition is the existence of a just cause that normally will make reference to the needs of the house in question; in any case it is not just a mere formality, but the granting of something in an exceptional way, although a serious reason or a peremptory necessity is not required—a just cause, for example, may be motivated by a reasonable pastoral convenience. It is possible that the criteria for granting it would be limited, on the one hand, by the spiritual good that would be provided to the inhabitants of that house, and on the other, by the conditions of dignity, security and decorum, as well as by the guarantee that worship of the Holy Eucharist in a place would not endanger the attention and the company due to the sacrament in another place of reserve.

Finally, it must be added that the text of the Code only considers the possibility of allowing for a second place to reserve the Holy Eucharist within the same house of piety, but the possibility of further permissions does not appear to be considered.

1. Cf. CPI, *Reply*, 5, June 2–3, 1918: *AAS* 10 (1918), pp. 346–347.

937 Nisi gravis obstet ratio, ecclesia in qua sanctissima Eucharistia asservatur, per aliquot saltem horas cotidie fidelibus pateat, ut coram sanctissimo Sacramento orationi vacare possint.

Unless there is a grave reason to the contrary, a church in which the blessed Eucharist is reserved is to be open to the faithful for at least some hours every day, so that they can pray before the blessed Sacrament.

SOURCES: c. 1266; *EMys* 51; HCW 8

CROSS REFERENCES: cc. 210, 213, 214, 898, 934 § 2, 938

COMMENTARY

Juan Ignacio Bañares

1. The foundation for the contents of this canon rests on the importance of the sacrament of the Eucharist in the life of the Church: not only at the moment of the sacrifice on the altar, or in the Eucharistic communion by the faithful, but also while reserved in the tabernacle.[1] Paul VI, in the Encyclical *Mysterium fidei*, notes "the inestimable dignity" of the sacred Eucharist "not only while the Sacrifice is being offered and the Sacrament is made ready," but also in the reservation of the Eucharist, for there is nothing as effective for traversing the road to sanctity as seeking a dialogue with Christ in the divine sacrament (*MF* 37, cf. *CCC* 1378, 1379, 1418). In consequence, the Roman Pontiff himself considers the reserve of the holy sacrament in temples and oratories the "spiritual center of the religious community or of the parochial community; and of the entire Church and all of humanity as well, because, under the covering of the species it embodies Christ, invisible head of the Church, Redeemer of the world and center of all hearts ... " (*MF* 38).

It is, therefore, a question of teaching and promoting the private worship of the Holy Eucharist "by deed and by word" (*EMys* 50 *in fine)*, and at the same time of making possible the compliance with a fundamental right of the faithful (cf. cc. 210, 213, and 214).

2. The text of the canon involves some modifications to the one preceding it, c. 1266 of the *CIC*/1917. The first of these has to do with the

1. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam*, June 21, 1973 (Typis polyglottis Vaticanis 1973). Cf. Decree of promulgation in *AAS* 65 (1973), p. 610.

sacred place as the object of the precept that is established. In *CIC*/1917 it was pointed out that, when imposing the obligation to keep open the churches where the holy sacrament was reserved, this duty was primarily (*praesertim*) incumbent on the parish churches. The instruction of 1967 regarding the worship of the Eucharistic mystery, in discussing in part III the worship of the Eucharist as *sacramentum permanens* incorporated—with slight changes—the text of *CIC*/1917 in one of its points, under the title "To the faithful facilitate access to these churches" ("Accessus ad ecclesias facilis pateat fidelibus"). There it was asked of the pastors to be certain that all churches and public auditoriums where the Holy Eucharist was reserved would be open at least for a few hours, both in the morning and in the evening, so that the faithful could pray to the sacrament (*EMys* 51) unhurriedly. Thus, by explicitly including the term *all* in referring to the churches and public auditoriums, specific reference to the parishes became unnecessary.

3. Another modification regarding the previous Code rests on the specification of the end result ordained by the canon: the present canon makes it explicit that every church where the sacred Eucharist is reserved must be open at least several hours a day "so that they (the faithful) can pray before the blessed Sacrament." Here as well, the genesis of the text of the Code is related to the instruction of 1967, as we have seen in the previously cited text. Similarly, it was pointed out in that instruction that the open hours of those churches had to be in the morning as well as in the evening in order to make it easy for the faithful to pray ("ut facile precari valeant," *EMys* 51); and a little farther, in referring to an adequate place to reserve the Eucharist, noted that—as well as being eminent—it would be "suitable for private prayer so that the faithful do not cease to honor the Lord in the Sacrament in an easy way and fruitfully also in private worship" (*EMys* 51; cf. *PO* 18; *MF* 37–39). Likewise, the GIRM recommends, specially for the Eucharistic reserve, "an adequate chapel for the adoration and the private prayer of the faithful,"[2] which evidently requires the possibility of access by the faithful. The first responsibility for this falls on the bishop—or whoever discharges this important task in his place. In fact, the *DPMB*, when discussing the divine worship and the correct ranking of the different forms of piety, points out in the first place that utmost attention must be paid to the adoration of Jesus Christ in the Eucharist both in the Mass and after it, and whatever is necessary for the churches and private auditoriums to facilitate the worship of the Holy Eucharist should be provided *pro fidelium commoditate* (*DPMB* 90 a).

The specific reference contained in the cited instruction about the opening of the church in the morning and in the evening does not appear in the text because, on the one hand, the circumstances could change considerably according to places and customs and, on the other, the purpose

2. Cf. no. 276, and the corresponding note, wherein *EMys* is cited as a source, 53.

is satisfactorily indicated. Therefore, it is left to the discretion of the pastors to establish the most suitable hours for fulfilling that obligation.

4. The duty to make this possibility available to the faithful is not solely moral, but one of strict justice, given the importance of the Eucharist and its worship in the life of the faithful, the set of fundamental rights of the faithful to the means of sanctification that the Church has at their disposal, and the fact that it is one of the first missions of the pastors (of the bishops and of the priests and deacons who cooperate with him). As for the rest, the importance of this affirmation and its relation with justice is also manifest in the requirement for a *grave reason* to be excused from compliance. That is why, in the places in which there are more problems—for example, either because the sacred ministers labor in various ministerial tasks, or because there are fewer guarantees of security—some means to prevent these difficulties from being onerous to the faithful must be found. In some cases it might be possible to have them rely on their own assistance so that the opening of the church does not involve abandonment or carelessness.

In certain circumstances, the obligation to facilitate access of the faithful to the place of the reservation of the Holy Eucharist becomes even more compelling. For example, in the case of the seminarians, for these it was determined that the tabernacle be placed in a manner that will facilitate private prayer and access to the students.[3] The reason is clearly expressed in a circular letter of the SCCE, sent on January 6, 1980, to the local ordinaries, about some especially urgent aspects of the spiritual formation of the students in the seminary by stressing in it the importance of Eucharistic adoration. It was said: "A priest who fails to convey this fervor, who has not acquired the pleasure of this adoration, will not know how to transmit it, betrays the Eucharist itself, and closes to the faithful their access to an incomparable treasure."[4] To be sure, attention will be given in the seminaries to this aspect of the training of students to enable them to make of the Eucharist the root of their spirit of communion (cf. *PO* 6; *AG* 9; *LG* 11).

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3. Cf. SCCE, Instr. *De institutione liturgica in seminariis*, Pars prior, no. 27 *in fine*: in *Notitiae* 15 (1979), p. 536).

4. SCCE *Lettre circulaire concernant quelques aspects plus urgents de la préparation spirituelle dans les Séminaires*, II, 2 (Typis polyglottis Vaticanis 1980); original in French, p. 15.

938 **§ 1. Sanctissima Eucharistia habitualiter in uno tantum ecclesiae vel oratorii tabernaculo asservetur.**

§ 2. Tabernaculum, in quo sanctissima Eucharistia asservatur, situm sit in aliqua ecclesiae vel oratorii parte insigni, conspicua, decore ornata, ad orationem apta.

§ 3. Tabernaculum, in quo habitualiter sanctissima Eucharistia asservatur, sit inamovibile, materia solida non transparenti confectum, et ita clausum ut quam maxime periculum profanationis vitetur.

§ 4. Gravi de causa, licet sanctissimam Eucharistiam, nocturno praesertim tempore, alio in loco tutiore et decoro asservare.

§ 5. Qui ecclesiae vel oratorii curam habet, prospiciat ut clavis tabernaculi, in quo sanctissima Eucharistia asservatur, diligentissime custodiatur.

§ 1. The blessed Eucharist is to be reserved habitually in only one tabernacle of a church or oratory.

§ 2. The tabernacle in which the blessed Eucharist is reserved should be sited in a distinguished place in the church or oratory, a place which is conspicuous, suitably adorned and conducive to prayer.

§ 3. The tabernacle in which the blessed Eucharist is habitually reserved is to be immovable, made of solid and non-transparent material, and so locked as to give the greatest security against any danger of profanation.

§ 4. For a grave reason, especially at night, it is permitted to reserve the blessed Eucharist in some other safer place, provided it is fitting.

§ 5. The person in charge of a church or oratory is to see to it that the key of the tabernacle in which the blessed Eucharist is reserved, is in maximum safe keeping.

SOURCES: § 1: c. 1268 § 1; *IOe* 95; *EMys* 52; GIRM 277; HCW 10
§ 2: c. 1268 § 2; *IOe* 95; *MF* 35; *EMys* 53; HCW 9; GIRM 276, 277; SCCE Instr. *In ecclesiasticam futurorum,* 3 iun. 1979, 27; *ID* 24
§ 3: c 1269 §§ 1 et 2; SCDS Instr. *De sanctissima Eucharistia sedulo custodienda,* 26 maii 1938 (*AAS* 30 [1938] 198–207); SCDS Monitum 10 feb. 1941 (*AAS* 33 [1941] 57); SCDS Let., 15 sep. 1943 (*AAS* 35 [1943] 282–285); SCRit Decr. *Urbis et Orbis,* 1 iun. 1957 (*AAS* 49 [1957] 425–426); *IOe* 95; *EMys* 54; GIRM 277, HCW 10; *ID* 25
§ 4: c. 1269 § 3; SCDS Let., 15 sep. 1943 (*AAS* 35 [1943] 282–285)
§ 5: c. 1269 § 4; HCW 10

CROSS REFERENCES: cc. 213, 214, 555 § 1,3°, 898, 934 § 2, 935, 937, 940

COMMENTARY

Juan Ignacio Bañares

This canon deals directly with the preparation, positioning and guarding of the tabernacle in the churches or oratories where the Holy Eucharist is reserved. Regarding this, for some years the instruction given in *SC* 128, which suggests the revision of several external items pertaining to the sacred worship, has been observed: among them, "the nobility, disposition and safety of the Eucharistic tabernacle."

1. The precept given in the first paragraph about not reserving the Eucharist in more than one tabernacle in each church or oratory had its origin in the preceding Code (c. 1268 § 1). The only difference worthy of notice is found in *CIC*/1917, which made mention of keeping the Eucharist "on only one altar," because at the time the usual practice was for the tabernacles to be on an altar table, and not away from it. In the Instruction *Eucharisticum mysterium* of 1967 there appears this instruction, which states that the Eucharistic reserve must be done in only one altar or *place* in the church (*EMys* 52–53). Later on, in the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass* of 1973, it is said that as a rule there must be one single tabernacle in each church, either well placed on the altar or—at the discretion of the local ordinary—away from the altar.[1] In the GIRM it is said without further comment that the tabernacle must be on an altar or away from it (no. 276) and, as a general rule, there will not be more than one in each church (no. 277).

As for the rest, the terms used in all documents leave room for the exception, in keeping with the pastoral objective for which the norm is designed. For example, in a decree of March 19, 1982, granting special powers to the chaplains who look after itinerant groups, the reservation of the Eucharist is allowed in ships or *roulottes* on condition that someone will be available to care for it, and that it be placed in a secure and dignified place, with appropriate safeguards employed.[2]

2. As for the location of the tabernacle inside the church, § 2 does not designate a specific place, but points out the conditions that must be met by the place assigned for the purpose. Formerly it was established that it

1. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam,* June 21, 1973, no. 10. Cf. Decree of promulgation in *AAS* 65 (1973), p. 610.
2. Cf. PCPCMIP, Decree, March 19, 1982, no. I, 4: *AAS* 74 (1982), p. 743.

should be placed in the most dignified and excellent place and, therefore, "as a rule on the Main Altar" (cc. 1268 § 2 and 1269 § 1 *CIC*/1917).

In *EMys* it was recommended that it be sited in a place *vere praecellens*, also suitable for private prayer, so that the faithful could also honor the blessed sacrament with private worship "in an easy and fruitful way." For this it was suggested that, whenever possible, it should be placed in a side chapel, particularly in those churches in which marriages and funerals are frequent, and in the places that are visited extensively because of their history or artistic objects (*EMys* 53). In the *Ordo Dedicationis Ecclesiae et Altaris* of 1977, it is added that in these cases, another altar could be erected in the chapel where the tabernacle is located (*erigi poterit*), where the Mass could also be celebrated on weekdays for reduced groups of faithful (RDCA IV, 7). In the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*, a different chapel, separate from the main aisle, is also advised for reserving the holy sacrament in the places that are the object of pilgrimages.[3]

As we have already stressed, in this ritual it is pointed out that the tabernacle must be either on an altar, or—at the discretion of the local ordinary—away from it, by following the criterion of the Instruction *Eucharisticum mysterium* that in turn was taken literally from *IOe* 95. In the GIRM it is established that when it is not possible to have an adequate chapel for this function, the Eucharist should be reserved "according to the structure of each church and the customs legitimate to each place, or away from the altar in a well decorated most noble area of the church" (GIRM 276). The Instruction *Inaestimabile_donum* of 1980 gives substantially the same indication (*ID* 24). The *CCC*, in quoting a text of the Encyclical *Mysterium fidei* notes that the tabernacle must be situated "inside the churches in one of the most dignified places, with the greatest honor" (no. 1183). In sum, the place for the reservation of the Eucharist, whether or not it is situated in an altar, must be prominent and noble, conveniently enhanced by adequate ornamentation, and suitable to facilitate private prayer by the faithful. This is, for example, one of the required conditions to enable a church to receive the title of *Minor Basilica.*[4]

3. As for disposition of the tabernacle, § 3 sets three conditions: regarding the place where it is kept, it must be immovable, that is, fixed; regarding the material used, it must be solid and not transparent; regarding inviolability, it must be locked without fissures. Also, the norms of *CIC*/1917 (c. 1269 § 1–2) and later ones are essentially collected here (cf. *IOe* 95; *EMys* 54). There are probably two explanations added to the required characteristics of solidity and inviolability: the first is the condition of immovability, and the second is that of transparency. Both have been consistently

3. Cf. *Rituale Romanum, De sacra communione et cultu* ..., cit., nos. 9–10.
4. Cf. SCSDW, Decr. *De Titulo Basilicae Minoris*, October 15, 1975, no. 2, in *Notitiae* 11 (1975), p. 260.

incorporated in the new editions of the Roman Missal (GIRM 277) and the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass.*[5] The *CCC* summarizes the purpose of this norm by saying that "the nobility, the disposition and the security of the Eucharistic tabernacle (*SC* 128) must favor the adoration of the Lord actually present in the Holy Sacrament of the altar," and farther ahead adds: "because of that, the tabernacle must be made in such a way that it will emphasize and make manifest the truthfulness of the real presence of Christ in the Blessed Sacrament" (nos. 1183, 1379).

The set of norms forbidding transparency has its origin more recently in *ID* 25 which partly rectifies a particular reply from the SCDW, given in December 1971.[6] The rectification consists simply in not acknowledging the exception since the reply, after pointing out the reasons that the tabernacle cannot be transparent, added that, in spite of that, crystal was not absolutely excluded as material for the manufacture of the tabernacle (and set as condition that it should be solid and inviolable, and be covered with a canopy, in a way that exposition should be reserved for special moments and follow the provisions of the liturgical norms in effect). Basically, as can be seen, the general principle was the same: the sacred vessel containing the sacred species must not be continuously seen. In fact, the reply adduced the following reasons. A permanent exposition is not appropriate, which would be the case if the tabernacle were manufactured with transparent material. Each thing must have its own place and, on principle, it is better for the blessed sacrament not to be present from the beginning in the place where it will be again made present by the sacrifice of the Mass (*EMys* 55). Because of this, it is prohibited, for example, to celebrate the Holy Mass in front of the exposed holy sacrament. Furthermore, the traditional forms of private devotion—such as the *Forty Hours* exercise, and others—would lose force if the blessed sacrament were to be constantly exposed. And finally, there would be the possible danger, once the initial fervor generated by the novelty were surpassed, of "minimizing the meaning of the real presence," reducing it to the value level of other, purely material, signs such as images, vessels for the ointments, baptismal font, etc.[7]

CIC/1917 stated that the tabernacle had to be guarded with sufficient diligence to remove the danger of any sacrilegious profanation. The present canon establishes in a simpler and more direct manner the objective of the norm: that it remain locked in such a way that the danger of profanation be avoided to the utmost. Thus, it is not just a question of adequately guarding the tabernacle, but by its very manufacture, the lock must be firmly secured.

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5. Cf. *Rituale Romanum, De sacra communione et cultu* ..., cit., no. 10.
6. Cf. X. OCHOA, *Leges Ecclesiae* (1979–1985), vol. VI, no. 4637; also *Notitiae* 7 (1971), pp. 414–415.
7. Cf. X. OCHOA, *Leges Ecclesiae* (1979–1985), vol. VI, no. 4637.

4. It is with the same intention that the following paragraph (§ 4), which states the permission to keep the blessed sacrament occasionally in another place, has been simplified. For this, firstly, there must be a *grave cause,* that usually will refer to the security of the sacred species, as inferred from the context (although the approval of the local ordinary is no longer necessary). Secondly, it has to be a *temporarily limited* circumstance, for example, at night as stated in the same legal text. However, any other time or occasion is not excluded (a prolonged absence of whoever takes care of the church, etc.). Thirdly, as a result of the objective of the norm, it is prescribed that the transfer be made to a place safer than the tabernacle (whether because of its manufacture, or by the proximity of someone responsible for safeguarding it). Lastly, it is indicated that the place to which it will be transferred must be dignified (with the necessary decorum). The presence of a lamp is not prescribed—as was done in *CIC*/1917—probably because it could be imprudent, from the standpoint of security; although most certainly there does not seem to be any objection to have a lamp placed. On occasion, there is an attempt to increase security by simultaneously seeking a greater inviolability of the receptacle and a greater concealment of it, by using, for example, a safe imbedded in the sacristy or in a suitable place in the parish house, discreetly covered.

5. The last paragraph of the canon (§ 5) notes the serious responsibility of whoever is in charge of the church or oratory, to look after the key to the tabernacle. The term used—*diligentissime,* with the greatest diligence—refers to, on the one hand, the attention that must be paid to this matter and, on the other hand, the need to establish a sufficiently secure system for the custody of the key. It is an issue separate from the general custody of the church or oratory, that is, that even when it is protected, the key to the tabernacle must not be kept in an accessible place. Thus, for example, it is not advisable for it to be beside the tabernacle, or in a visible place in the church or sacristy; ordinarily, security will be gained by keeping it in a reserved place, and under lock and key.

Canon 555 designates among the specific functions of the vicar forane, that of safeguarding the Eucharist. This duty is again established in the pastoral of the emigrants, referring to the delegates.[8]

The editions of the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*[9] that followed the Code have substituted the foregoing text with the literal terms of this paragraph of c. 938.

8. Cf. SCB, Instr. *De pastorali migrantium cura,* August 22, 1969, no. 47, §1, b: *AAS* 61 (1969), p. 637.
9. Cf. *Rituale Romanum, De sacra communione et cultu* ..., cit., no. 10.

939 **Hostiae consecratae quantitate fidelium necessitatibus sufficienti in pyxide sen vasculo serventur, et frequenter, veteribus rite consumptis, renoventur.**

Consecrated hosts, in a quantity sufficient for the needs of the faithful, are to be kept in a pyx or ciborium, and are to be renewed frequently, the older hosts having been duly consumed.

SOURCES: cc. 1270, 1272; SCDS Resp., 7 dec. 1918 (*AAS* 11 [1918] 8); SCDS Instr. *Dominus salvator noster*, 26 mar. 1929 (*AAS* 11 [1929] 631–642); *Rituale Romanum*, 1952, tit. V, c. I. 7; GIRM 285; HCW 7

CROSS REFERENCES: cc. 934 § 2, 935, 940

COMMENTARY

Juan Ignacio Bañares

This canon recalls what c. 1270 *CIC*/1917 established, although it does not refer as that one did to the characteristics of the ciborium, which are left to the determination of the pertinent liturgical norms (cf., e.g., *ID* 16). At the same time, it incorporates the criteria of c. 1272 *CIC*/1917 about the consumption of the forms and their frequent renewal. The reason for it, as pointed out in c. 1272 *CIC*/1917, was to avoid the danger of corruption of the sacred species. Thus, it is a question of detail about care of and sensitivity to the blessed sacrament, and this is one more proof of the explicit faith in the permanence of the real presence of Jesus Christ in the Eucharist (cf. *CCC* 1378).

The following norms and suggestions regarding the forms may be deduced from this canon: 1) the sacred particles remaining after distributing communion must be consumed or transported by the appropriate minister to the place selected for its reserve (cf. *ID* 13); 2) their number must be sufficient to take care of the needs of the sick and other faithful who receive the sacrament outside the holy Mass; 3) it is desirable for their number not to be so excessive as to make it difficult to consume the species in a reasonable period of time; 4) recent confection facilitates and insures good preservation of the species; 5) the consecrated species must be renewed—and, therefore, consumed—frequently. The safest and most common practice has been the weekly renewal, whenever possible, and in any case it is better to avoid a delay of more than fifteen days (cf. c. 934 § 2); and 6) special attention and care must be exercised in the reserve and consumption of the leftover species whenever it is anticipated that their number might be very high (e.g., by reason of pilgrimages, special feast

days, visits of the Roman Pontiff, etc.) On those occasions it would be convenient, for example, to have available a chapel or other sacred place in the vicinity of which all of the species could be transferred and, therefrom, if necessary, distribute them to other nearby churches for consumption.

As is known, consecrated wine cannot be preserved (*ne asservari licet*) but must be consumed immediately (cf. *ID* 14).

940 **Coram tabernaculo, in quo sanctissima Eucharistia asservatur, peculiaris perenniter luceat lampas, qua indicetur et honoretur Christi praesentia.**

A special lamp is to burn continuously before the tabernacle in which the blessed Eucharist is reserved, to indicate and to honor the presence of Christ.

SOURCES: c. 1271; SCRit Decr. *Urbis et Orbis*, 13 mar. 1942 (*AAS* [1942] 112); SCRit Decr. *Urbis et Orbis*, 18 aug. 1949 (*AAS* [1949] 476–477); SCRit Decr. *Plures locorum Ordinarii*, 13 dec. 1957 (*AAS* [1958] 50–51); *EMys* 57; HCW 11; *ID* 25

CROSS REFERENCES: cc. 898, 934 § 2, 937, 938 § 2

COMMENTARY

Juan Ignacio Bañares

As has been the invariable tradition of the Church, it is a question of reaching two objectives, self-evident in the previous canon of *CIC/1917*, which nonetheless this Code has chosen to state in an explicit manner. The first objective is that of honoring Christ, precisely as an indication of the Church's faith in the real, actual and substantial presence of his divinity and humanity under the Eucharistic species reserved in the tabernacle (*CCC* 1378, 1379, 1423, 1418). The second objective seeks the external expression of the presence of the reservation of the Eucharist so that the faithful will be aware of the place where it is located. Therefrom also arise the two conditions set down for the lamp itself: as for place, that it be *in front* of the tabernacle, thus serving to identify it; as for its manufacture, that it be specifically for that purpose (*peculiaris*), that is, it should not be easily mistaken for any other lamps that might be in the area (for example, votive candles).

The canon also stipulates that the lamp must be permanently lit while the Eucharist is in the place of reserve, wherever the place of the legitimate reserve may be—for example, authorized places on ships or *roulottes*[1]—except when it is concealed for reasons of security (see commentary on c. 938). This detail stresses the first objective: that of honoring the blessed sacrament, hence the attention that must be given to the replacement of the lamp, when it is extinguished.

1. Cf. PCPCMIP, Decree of March 19, 1982, no. I, 4, in *AAS* 74 (1982), p. 743.

Formerly it was explicitly established that the lamp had to be fueled with olive oil—or, by permission of the ordinary, with other vegetable oils—or with beeswax (c. 1271 *CIC*/1917). The Instruction *Eucharisticum mysterium* incorporated the norm of the Code, stating that it was a tradition and its objective was to honor the blessed sacrament (*EMys* 57); but even while expressly citing the canon as its source, it did not say anything about the manufacturing material. The *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass* made it explicit again that the lamp should be fueled with wax or oil, although it did not add anything about the quality of the latter. The Instruction *Inaestimabile donum* of 1980 limited itself to pointing out that a lamp should burn permanently. Finally, the new text of the Code introduced the secondary purpose of its use: the indicatory function for the faithful and the *unique* function that the lamp should have, probably to avoid including in the legislative text such specific details about its manufacture. This interpretation is reinforced by the variations introduced in the editions of the cited ritual, subsequent to the publication of the Code. In fact, the foregoing text has been superseded in its entirety by that of the present canon—as it has also been done in other cases and subjects—but in this peculiar point the ritual has specifically added that, as far as possible, the lamp must be fueled by oil or wax, *secundum traditam consuetudinem*,[2] emphasizing again this detail, without subjecting it to the rigidity characteristic of a text of the Code.

As for other signs denoting the reservation of the Eucharist, it would be useful to keep in mind the following: the Instruction *Eucharisticum mysterium* also noted, in addition to the lamp, the responsibility for keeping vigil to indicate the presence of the Holy Eucharist in the tabernacle, by means of the canopy or another suitable means, defined by the appropriate authority (*EMys* 57). The *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass* makes the same point.[3] As a result, in addition to the lamp prescribed by the existing Code, the presence of the Eucharist in the tabernacle must also be indicated by a canopy or by any other suitable means being determined by the appropriate authority.

2. SCDW, *Rituale Romanum, De sacra communioneet cultu mysterii eucharistici extra Missam*, June 21, 1973, no. 11 (Typis polyglottis Vaticanis 1973).
3. Ibid.

941 **§ 1. In ecclesiis aut oratoriis quibus datum est asservare sanctissimam Eucharistiam, fieri possunt expositiones sive cum pyxide sive cum ostensorio, servatis normis in libris liturgicis praescriptis.**

§ 2. Celebratione Missae durante, ne habeatur in eadem ecclesiae vel oratorii aula sanctissimi Sacramenti expositio.

§ 1. In churches or oratories which are allowed to reserve the blessed Eucharist, there may be exposition, either with the ciborium or with the monstrance, in accordance with the norms prescribed in the liturgical books.

§ 2. Exposition of the blessed Sacrament may not take place while Mass is being celebrated in the same area of the church or oratory.

SOURCES: § 1: c. 1274 § 1; CodCom Resp. X, 14 iul. 1922 (*AAS* 14 [1922] 529); CodCom Resp. 3, 6 mar. 1927 (*AAS* 19 [1927] 161); *EMys* 60, 62 66; HCW 82–90
§ 2: *EMys* 61; HCW 83

CROSS REFERENCES: cc. 934 § 1, 937, 938 § 2, 942–944

COMMENTARY

Juan Ignacio Bañares

This canon is new, and modifies the criteria of c.1274 § 1 *CIC*/1917. In fact, regarding § 1, the foregoing canon set forth that a just cause was necessary to expose the blessed sacrament in a simple way, with the ciborium; and just and grave cause "above all public" was required as well as permission from the local ordinary—even in the churches belonging to an exempt religious order—to expose the Eucharist with the monstrance, excepting the feast of the Blessed Body and Blood of Christ and its octave (during the solemn Mass and vespers).

The current norm, on the other hand, does not indicate the need for any permission or for any special cause for exposing the blessed sacrament, whether in the ciborium or in the monstrance. This means, on the one hand, that the exposition is understood not as something extraordinary for exceptional situations, nor as a privilege, but as an authentic way of expressing—and encouraging—the worship of the blessed Eucharist outside the Mass (cf. *CCC* 1387) for all of the faithful and under ordinary circumstances. Its final objective consists in inciting the desire for

receiving holy communion (cf. *EMys* 60). Therefore, devotion as a cause and the benefit of the faithful will be sufficient as objectives, a benefit that is intrinsic merely by their attendance. On the other hand, it means that the criterion is left to the discretion of the pastors since they are the ones who know best the situation and the opportunities of a particular group of faithful. In the third place, a positive intention is discerned on the part of the legislator, which is to consider the practice praiseworthy, even frequent, providing there is a sound reason for the souls of the faithful. In the fourth place, it is estimated that the prudence itself that is exercised by the pastors may determine when it is convenient to expose the blessed sacrament either with the ciborium or with the monstrance. And, finally, for further details the specific norms prescribed for each moment in the respective liturgical books are enough. In some cases, such as in the seminars, celebration of the exposition of the blessed sacrament is exhorted several days a year, in keeping with the norms of the Instruction *Eucharisticum mysterium* and those set down by the local ordinary.[1] It should be said that in none of the liturgical books are there any restrictions about this norm.

Regarding what is established in § 2, nothing was said in *CIC*/1917. In subsequent documents of the Holy See it was determined that it was not licit—in the absence of a need, grave cause, or special dispensation—to celebrate other high or low Masses at the altar where the blessed sacrament was exposed in the monstrance,[2] or where the blessed sacrament was exposed in the ciborium, either in or out of the tabernacle.[3]

The Instruction *Eucharisticum mysterium* straightforwardly and definitively prohibited the celebration of Mass in a church where the blessed sacrament was being exposed, thereby formally abrogating the concessions and traditions to the contrary "etiam speciali mentione dignis" (*EMys* 61). Thus, a norm of definitive and absolute character is established. It is a question of enhancing the sacrificial character of the Holy Mass, and enhancing the moment of consecration as the cause of the transubstantiation that generates—in that instant—the actual presence of Christ under the appearance of the sacred species. Hence, it is recommended that, inasmuch as possible, the blessed sacrament not be reserved in the tabernacle simultaneously when it is located at the altar where the Holy Mass is going to be celebrated (cf. *EMys* 55). But, it is also a question of making it obvious that of itself the celebration of the Eucharistic mystery includes, in the most perfect way, that internal communion which is motivated by exposition of the blessed sacrament (cf. *EMys* 61). Thus, when the Eucharist is exposed continually, its exposition must be inter-

1. Cf. SCCE, Instr. *De institutione liturgica in seminariis*, Pars prior, no. 27, in *Notitiae* 15 (1979), p. 536.
2. Cf. SCR, *Reply*, April 4, 1919, in *AAS* 11 (1919), p. 246.
3. Cf. SCR, *Reply*, July 27, 1927, in *AAS* 19 (1927), p. 289.

rupted whenever the Mass is going to be celebrated in the church or oratory, unless it can be celebrated in a chapel separate from the place of the exposition, and unless at least a few faithful can remain in adoration of the exposed sacrament (cf. *EMys* 61). *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*[4] does not change these indications, but includes them in their entirety.

4. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam,* May 21, 1973 (Typis polyglottis Vaticanis 1973).

942 **Commendatur ut in iisdem ecclesiis et oratoriis quotannis fiat sollemnis sanctissimi Sacramenti expositio per congruum tempus, etsi non continuum, protracta, ut communitas localis eucharisticum mysterium impensius meditetur et adoret; huiusmodi tamen expositio fiat tantum si congruus praevideatur fidelium concursus et servatis normis statutis.**

It is recommended that in these churches or oratories, there is to be each year a solemn exposition of the blessed Sacrament for an appropriate time, even if it be not continuous, so that the local community may more attentively meditate on and adore the eucharistic mystery. This exposition is to take place only if a fitting attendance of the faithful is foreseen, and the prescribed norms are observed.

SOURCES: c. 1275; *EMys* 63; HCW 86

CROSS REFERENCES: cc. 898, 934 § 1, 941 § 1, 943

COMMENTARY

Juan Ignacio Bañares

This canon is imbued with an immediate pastoral objective based on the dogmatic truth of the actual, real and substantial presence of Jesus Christ in the Eucharist, and as a result, with the necessity to fulfil a twofold duty. The first is, of course, the duty of publicly expressing this faith of the Church, thus teaching it to all of the faithful with signs suitable for their understanding and benefit. The second duty is to facilitate to the faithful the worship of the blessed Eucharist. If the Church wants to transmit this truth and favor the adoration of the blessed sacrament and meditation of this truth of the Catholic faith, it is desirable that the places where the Eucharist is reserved (churches or oratories), periodically, at least, offer public worship in a solemn way. Because of this, the canon establishes that this possibility should be offered to the faithful at least once a year.

From a historical standpoint, this norm has its antecedent in the observance prescribed in c. 1275 of the *CIC*/1917, that of the *Forty Hours* established in order to recollect the time that the body of Christ remained in the sepulchre until his resurrection. However, the text of the present Code takes into consideration the diversity of customs and situations that exist within the context of the Latin Rite: thus it does not refer explicitly

to the *Forty Hours*, but to "an adequate time," and does not require it to be continuous, but makes possible its interruption. The Letter *Dominicae coenae* sent by John Paul II to all bishops a short time before the promulgation of the Code, explicitly compiled the multiple forms of adoration of the blessed sacrament, and cited among them the private prayers offered individually, the organized (scheduled) hours of adoration, the expositions—more or less lengthy—of the Eucharist, the *Forty Hours*, the benedictions, expositions, and the Eucharistic congresses.[1]

On the other hand, as a product of the legislator's intention to encourage the worship of the sacred Eucharist as part of the ordinary and daily life of the Church and of the faithful, the present text does not prescribe the intervention of the local ordinary for approving the days of the intended worship, a prescription that was retained in the Instruction *Eucharisticum mysterium* (no. 63) and in the edition of the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*[2] precedent to the Code.

Furthermore, since the objective of the norm is directly pastoral, it points out that to carry out this act two prior conditions must be taken into account—evident in any case by common sense. The more general condition is that the pre-established norms can be fulfilled (from the context it is evident that the existing liturgical norms are meant); and the more particular and specific norm has to do with the reasonable expectation of a sufficient number of faithful in attendance. It must be kept in mind that the reference to "proportionate attendance" does not mean that an overly large number of faithful is required, rather, just the necessary number for the blessed sacrament to be continuously accompanied with the proper dignity. The required proportion will be a function of the established duration intended for this part of the worship; here, likewise, the diversity of circumstances and places leave room for judicious determination. Thus, it is a question of making available the necessary mechanism for the carrying out of this portion of the worship, keeping in mind it should not be done if it is detrimental to the security or dignity owed to the Eucharist. In such cases it is permissible—as an exception to the general rule—to forgo compliance with this norm of exhortative nature.

This norm may reach prominence according to the moment, or needs of the faithful themselves, for example, in the face of a formation of seminary students,[3] or in other teaching centers that have a church or oratory with a reservation of the Eucharist.

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1. Cf. JOHN PAUL II, Letter *Dominicae Coenae*, February 24, 1980, in *AAS* 72 (1980), p. 118.
2. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam*, June 21, 1973, no. 86 (Typis polyglottis Vaticanis 1973).
3. Cf. SCCE, Instr. *De institutione liturgica in seminariis*, June 3, 1979, no. 27, in *Notitiae* 15 (1979), p. 536.

943 Minister expositionis sanctissimi Sacramenti et benedictionis eucharisticae est sacerdos vel diaconus; in peculiaribus adinntis, solius expositionis et repositionis, sine tamen benedictione, est acolythus, minister extraordinarius sacrae communionis aliusve ab Ordinario loci deputatus, servatis Episcopi dioecesani praescriptis.

The minister of exposition of the blessed Sacrament and of the eucharistic blessing is a priest or deacon. In special circumstances the minister of exposition and deposition alone, but without the blessing, is an acolyte, an extraordinary minister of holy communion, or another person deputed by the local Ordinary, in accordance with the regulations of the diocesan Bishop.

SOURCES: c. 1274 § 2; *SDO* V, 3; *MQ* VI; HCW 91

CROSS REFERENCES: cc. 134 §§ 1–3, 230 §§ 1 et 3, 376, 835 § 3, 910 § 2

COMMENTARY

Juan Ignacio Bañares

In this canon the modifications undergone since the legislation of the *CIC*/1917 are noteworthy. In fact, c. 1274 § 2 *CIC*/1917 named both the priest and the deacon as ministers of the exposition and the Eucharistic reservation, although it was pointed out that the latter was not a minister of the benediction with the blessed sacrament except in those cases in which he would be taking viaticum to a sick person. In the Conciliar Constitution *Lumen gentium*, when speaking of the deacons it was noted that for them it was fitting, to the degree that they might have been entrusted by competent authority "to be custodian and distributor of the Eucharist" (*LG* 29). Shortly after that, the *Motu proprio Sacrum diaconatus ordinem* of June 18, 1967, included among the functions of the deacons, to the degree that they may have been entrusted by the local ordinary, that of "reserving the Eucharist, distributing it to themselves or to others, taking it as Viaticum to the sick, and giving the so called 'benediction' to the people with the sacred vessel" (*SDO* 22.3).

In the first edition of the *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*,[1] June 21, 1973, the priest and

1. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam*, June 21, 1973, no. 91 (Typis polyglottis Vaticanis 1973).

the deacon were designated as ordinary ministers for the exposition and benediction with the blessed sacrament (cf. *SDO* 22.3), and it was added that in their absence, or if disabled, the exposition and reposition of the Eucharist could be executed by: *a*) an acolyte or an extraordinary minister of the Eucharist; or *b*) any member of a lay pious association—of men or women—dedicated to Eucharistic adoration and assigned for that endeavor by the local ordinary. Other than this, it was noted that in these cases benediction with the blessed sacrament could not be given. Thus, it was permissible for the deacon to give the Eucharistic benediction regularly when exposing the blessed sacrament, and the religious or laypeople of either sex were allowed only to expose or reserve it (but never to give the benediction), although in such cases, a prior lay ministry or an explicit assignment from the local ordinary was required. The present c. 910 § 2 designates as an extraordinary minister of the Eucharist the acolyte or another faithful appointed as extraordinary minister according to c. 230 § 1 (where the conferral of the stable ministries of acolyte and lector is dealt with; cf. also § 3 of the same canon). The latest editions of the ritual correspond to the new text of the Code.

Here the Code has also adopted the preceding norms while simplifying the conditions required for religious or laypersons: it suffices to have been entrusted by the local ordinary. Once again, the eminently pastoral objective of the norm has prompted consideration of the possible range of circumstances and given primacy to the proximity of the ordinary for evaluating them on each occasion.

In any case, it should be taken into account that the deacon must not give the benediction when priests are present. In fact, in a reply given to a question asked to the pertinent congregation it was said that when the ritual uses the expression *sacerdos vel diaconus*, even if it does not explicitly add the condition *eo deficiente*, in no way does it mean that the deacon can give the Eucharistic benediction if priests who are not impeded are present. The reason, which was also brought up when the question of whether a deacon was able to preside at the recitation of the liturgy of the hours in the presence of priests under no canonical impediment, rests on the fact that, according to the mind of the legislator, the deacon is ordained in order to assist the presbyter or substitute for him to the degree which is necessary and possible.[2] Consequently, *a fortiori* priests and deacons have to be either absent or impeded for a lay or religious person not ordained *in sacris* to participate, even if he has been legitimately entrusted by the local ordinary.

Whenever, in special circumstances, and with due permission, a faithful who has not received the sacred orders participates, he may conduct the exposition, either by opening the door of the tabernacle, by

2. Cf. *Notitiae* 12 (1976), p. 47.

placing the ciborium on the altar, or by placing the ostensorium in the monstrance.[3]

Finally, it is necessary to be mindful of the call to respect the prescriptions, not only the general ones, but also the specific ones that in special cases may have been issued by the diocesan bishop.

3. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu* ..., cit., no. 91.

944 **§ 1. Ubi de iudicio Episcopi dioecesani fieri potest, in publicum erga sanctissimam Eucharistiam venerationis testimonium, habeatur, praesertim in sollemnitate Corporis et Sanguinis Christi, processio per vias publicas ducta.**

§ 2. Episcopi dioecesani est de processionibus statuere ordinationes, quibus earum participationi et dignitati prospiciatur.

§ 1. Wherever in the judgement of the diocesan Bishop it can be done, a procession through the streets is to be held, especially on the solemnity of Corpus Christi, as a public witness of veneration of the blessed Eucharist.

§ 2. It is for the diocesan Bishop to establish such regulations about processions as will provide for participation in them and for their being carried out in a dignified manner.

SOURCES: § 1: c. 1291; *EMys* 59; HCW 101–104
§ 2: c. 1295; SCRit Resp., 28 oct. 1922 (*AAS* 16 [1924] 103–104); SCRit Resp., 24 aug. 1933; SCRit Resp., 25 aug. 1938; *EMys* 59; HCW 101

CROSS REFERENCES: cc. 376, 530,6°, 898

COMMENTARY

Juan Ignacio Bañares

In *CIC*/1917 there was a brief title containing six canons (1290–1295) about *sacred processions*. These types of processions were defined there as ordinary and extraordinary—as well as the functions and participation of the people involved: local ordinary, parish priests, members of religious orders, etc. In one of these canons (1291) the Eucharistic procession on occasions of the solemnity of the body and blood of Christ was discussed, and it was recommended that only one procession should take place on that date in each city, leaving from the principal church with all of the clergymen, male members of religious orders, and secular brotherhoods; the other churches could, at the discretion of the local ordinary, organize their own processions within the octave. However, the Code does not specifically discuss the norms pertaining to the processions. Obviously this omission does not mean that their desirability is doubted, and this is shown in the same Code (c. 530,6°) where it mentions the functions that

are specifically entrusted to the parish priest, which include that of leading the processions outside the church. Other than this, the practice is founded in the history and tradition of the Church, and has also been defended and encouraged in the latest pontificates (cf. *MF* 32). The same Instruction *Inaestimabile donum* of April 3, 1980, specifically refers to the Eucharistic processions and defers to the Roman Ritual (cf. *ID* 22). Also, the *Catechism of the Catholic Church*, promulgated by John Paul II, cites specifically—following a text of the Encyclical *Mysterium fidei*—the processions, when discussing the Eucharistic worship (cf. *CCC* 1378).

Consequently, it is necessary to interpret the silence of the Code as an application of two general principles that appear frequently in the legislative text when discussing this type of subject. The first has to do with leaving the development of many specific norms to the rituals and instructions of the appropriate congregations—because, among other things, the criteria may change with the passage of time and, obviously, it is easier to change the text of a specific norm than the text of the Code. The second principle involves leaving in the hands of the local ordinaries or of the diocesan bishops whatever is pertinent to pious customs that, nonetheless, could have a wide diversity of roots and customs according to time and place. These consequently require the exercise of prudent discretion to understand and appraise them in their own context and take pertinent measures about their desirability and timeliness, their inclination, organization and control. That is the aim of § 2 of the canon on which we commented: that it transfers to the diocesan bishops the duty to establish norms about the processions—to any and all of them—specifically for the purpose of guaranteeing *participation* (since by definition, it is not just a public ceremony, but one that tends to congregate a multitude of the faithful, a large gathering) and the *decorum* (since it is a form of worship which requires certain minimum conditions of dignity and security).

Paragraph 1 incorporates the idea of the brief text contained by the *Eucharisticum mysterium* which recommended the Eucharistic processions, especially during the feast of the body and blood of Jesus Christ, as a public testimony of faith and piety, and reminded the local ordinary of the duty to evaluate the occasion as regards the place, disposition and security for the proper veneration of the blessed sacrament (cf. *EMys* 59).

The *Ritual on Holy Communion and Worship of the Eucharistic Mystery outside of Mass*[1] incorporates in its entirety the paragraphs of the foregoing instruction, but exchanges—in the latest editions—the term "local ordinary" for that of "diocesan bishop." Furthermore, it gives a few additional indications of interest that contribute to the general treatment of this subject and also helps to understand the spirit of what is prescribed in this paragraph of c. 944.

1. Cf. SCDW, *Rituale Romanum, De sacra communione et cultu mysterii eucharistici extra Missam,* June 21, 1973, no. 101 (Typis polyglottis Vaticanis 1973).

This document points out, in the first place, the particular importance and significance—in the pastoral life of the parish or city—acquired by the procession that is customary during the solemnity of the body and blood of the Lord, or on a nearby date that may seem more appropriate. Consider, for example, the possibility of having the procession on the Sunday nearest to the feast, in the case that the day of the solemnity is not a civic holiday. In the second place, the convenience of holding the procession is emphasized, provided that circumstances permit and the procession can be a sign of faith and common adoration. Assuredly, this is one of the ways to comply with what is indicated in c. 898, asking the faithful for the "utmost adoration" in the worship of the Eucharist, and also asking the pastors of souls "assiduously to instruct the faithful about their obligation in this regard." Preference is also given to the holding of a single procession in each city, although it is also permissible—at the discretion of the local ordinary—to celebrate other processions in different parts of the city (if it is a very large one) when pastoral reasons consider it advisable. On the other hand, it is specified that whenever the Eucharistic procession cannot take place, it will be desirable to have another type of public celebration, either for the entire city—in the cathedral—or in different points of the same city.[2]

As for the most suitable time for the procession, the ritual sets forth the preferred criterion of its taking place either immediately after the celebration of the Mass where the sacred species which is to be exposed is consecrated, or by leaving adequate space between these two events set aside for public adoration of the blessed sacrament in the church.[3]

Regarding the specific organization of this act of worship, it must be noted that arrangements are to be made about the disposition of the participants, the ornamentation of the streets and public squares of the city, and the probable *stations* along the route—including the Eucharistic benediction in each one—in keeping with the customs of each place. Finally, it is indicated that any chants and prayers used during the procession must be directed toward focusing the complete attention of the faithful on the Lord,[4] and the expression of their faith in Christ.

2. Cf. ibid., no. 102.
3. Cf. ibid., no. 103.
4. Cf. ibid., no. 104.

CAPUT III
De oblata ad Missae celebrationem stipe

CHAPTER III
The Offering Made for the Celebration of Mass

945 **§ 1. Secundum probatum Ecclesiae morem, sacerdoti cuilibet Missam celebranti aut concelebranti licet stipem oblatam recipere, ut iuxta certam intentionem Missam applicet.**

§ 2. Enixe commendatur sacerdotibus ut, etiam nulla recepta stipe, Missam ad intentionem christifidelium praecipue egentium celebrent.

§ 1. In accordance with the approved custom of the Church, any priest who celebrates or concelebrates a Mass may accept an offering to apply the Mass for a specific intention.

§ 2. It is earnestly recommended to priests that, even if they do not receive an offering, they celebrate Mass for the intentions of Christ's faithful, especially of those in need.

SOURCES: § 1: c. 824 § 1; PAULUS Pp. VI, m. p. *Firma in traditione*, 13 iun. 1974 (*AAS* 66 [1974] 308); Secr. St. Normae, 17 iun. 1974

CROSS REFERENCES: § 1: cc. 6 § 2, 946, 951 § 2, 1308 § 3
§ 2: cc. 222 § 1, 281, 904, 1274

COMMENTARY

Joaquín Calvo-Álvarez

I. Beginning in the first paragraph of the canons that regulate the discipline of stipends (*stips*), the *CIC* clearly establishes the legitimacy of this canonical institution. It is, therefore, a *licit* institution based on an "approved usage of the Church." Once the liceity is set down, the next

canon (c. 946) goes one step farther by praising the conduct of the Christian people which is a concrete way of contributing to the "good of the Church."

1. The text of § 1 is inspired in part by the *Motu proprio* of Paul VI's *Firma in traditione* of April 13, 1974.[1] Obviously, it also takes into account c. 824 § 1 of the *CIC*/1917.[2]

2. From the *historical* viewpoint the *stips* seems to have had its origin in the offertory of the Mass, during which the faithful who participated in the Eucharistic celebration offered primarily the bread and the wine for the sacrifice, as well as other natural gifts, both for sustenance of priests and as food for the poor.[3] In this manner the *stips* offered was properly united with the Eucharistic celebration itself.[4]

As for the *nature* of the *stips*, most of the authors who dealt with the subject maintained that it was an oblation of the Christian faithful on the occasion of the Eucharistic sacrifice, so that it would be celebrated and applied for their intention, and also to help provide for the sustenance of the ministers as well as to attend to the different needs of the Church.[5]

At this point it seems appropriate to refer to some of the reasons for the *legitimacy* of this ecclesial usage. Miguélez notes that the minister of worship has the right to be provided for; he also states the justification is inferred from 1 Cor 9:7 and 13[6]. Another important reason is the fact that since the Eighth century the Church has admitted it. The author adds that there is no simony in this usage since the stipend is not received *for the Mass*, but on the occasion of it, for the sustenance of the celebrant.[7] Manzanares, on the other hand, considers other reasons or features that facilitate understanding regarding the justification for the stipend: "the attitude of the magisterium: it struggled against the abuses, but it also defended its

1. Cf. *AAS* 66 (1974), pp. 308ff; also the text of this mp in *Comm.* 6 (1974), pp. 117–119. The reference to the express consideration of this antecedent, in *Comm.* 13 (1981), pp. 430–431.

2. Manzanares affirms that, in this matter of stipends, the *CIC* "reproduces the old law, save a few innovations clearly indicated" (J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo Derecho parroquial* (Madrid 1990), p. 247).

3. Cf. *Comm.* 4 (1972), p. 57. The report was compiled by W. Onclin, acting as the Relator of the *coetus* "de Sacramentis."

4. Cf. ibid. According to Jungmann, in the light of Christian tradition, the stipend is a gift given by God that, just like the bread and wine, is oriented to the Sacrifice of the New Testament (J.A. JUNGMANN, *El Sacrificio de la Misa. Tratado histórico-litúrgico* (Madrid 1953), pp. 654–655).

5. Cf. *Comm.* 4 (1972), pp. 57–58.

6. The mp *Firma in traditione* points out some texts of the New Testament which shed light on the legitimacy of this traditional use. In addition to 1 Cor 9:7–14, see Lk 10:7 and also 1 Tim 5:18. Cf. *AAS* 66 (1974), p. 308.

7. Cf. L. MIGUÉLEZ, commentary on c. 824, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976).

legitimacy before the puritans." He also pointed out that the same ecclesial discipline that regulates it in detail in order to avoid the slightest hint of negotiation, is proof of the legitimacy of this ancient usage.[8]

As for the interpretation, both of this canon and succeeding ones which refer to the stipend offered for the celebration of the Mass, it is necessary to keep in mind what is stated in c. 6 § 2, which prescribes that "to the extent that they reproduce the ancient law, the canons of this Code must be understood by also keeping in mind the canonical tradition." And it is clear that in regards to this subject the *CIC* substantially reproduces the ancient law.[9]

3. In the new *CIC* the term *stipendium* is no longer used. This word—as Onclin explains—seems alien to the very nature of this oblation, as it could mistakenly indicate that the oblation is made as reward or remuneration for carrying out the celebration. On the contrary, *stips* as historically recorded, means most appropriately that the oblation is done for the carrying out of a public task, or to honor God, or to help the poor, being therefore more compatible with the nature of the oblation on occasion of the Eucharistic celebration.[10]

Already in the rubrics of the chapter (the third of tit. III of book IV) the *CIC* ceases to use *stipendium*, substituting *stips* for that term [11]; and in cc. 945–958, which regulate this canonical institution, *stips* is used as the only term. It is then a question of making clearer that what is being regulated is an *offering* and not some sort of *tribute.*[12] The exclusive use of the new term in the canons we studied therefore clarifies the very nature of this institution, improving the diction used in *CIC*/1917.

In any case it is desirable to be mindful that *CIC*/1917 did not use only the term *stipendium*. From the first canon on this subject (c. 824) two words claiming to be equivalent were used: *eleemosyna* and *stipendium* (also cf. the rubrics of the art. 4 of chapter I of tit. III of book III, which used the same terms). Even cc. 824–844 which dealt with *eleemosyna,* used primarily this same term, as well as *stips* at times; thus, *stipendium* was used very few times in the *CIC*/1917. However, the variation of the term which is the indicator of the institution for expressing with more precision its nature is a subject of the new *CIc.* Alonso Lobo explains that "among the Romans *stipend* meant the payment and the sustenance of the soldiers; the Apostle made use of the word to indicate the right of the

8. J. MANZANARES, commentary on c. 945, in *Salamanca Com.*

9. A. MARZOA says that "the new Code ... substantially maintains the same prior discipline" (commentary on cc. 945–947, in *Pamplona Com*). See also *supra* note 2.

10. Cf. *Comm.* 4 (1972), p. 57.

11. Nevertheless, c. 1308 § 3 makes use of the noun *eleemosyna.* Perhaps this is due a lack of coordination on the part of the codifiers, since the intention was obviously to maintain a consistent terminology.

12. The *stips* is an *oblatio.* Cf. c. 946.

ministers of Christ and of the souls to live off their spiritual work, to be supported by the faithful they serve."[13]

While the work of reform of the *CIC*/1917 progressed, Paul VI expressed the traditional feeling of the Church about this institution, in which the faithful, inspired by a religious and ecclesial affection, come closer to Christ, who offers himself under the appearance of the host, and through this receive a greater abundance of fruits. The nature of the institution is therefore clear, and the terms used by the *CIC* to designate it express more clearly than the *CIC*/1917 that nature. However, some official translations, as, for instance, Spanish, use the term *estipendio*. It is thus of interest to keep in mind the change in terminology of the *CIC* as well as its meaning so it is not obscured by the retention of the Spanish term *estipendio* that, otherwise, benefits from a broad and traditional usage.[14]

4. The *stips* offered for the celebration of the Mass does not constitute a *juridical* obligation for the faithful who expects the celebrant to renew with this sacrament the sacrifice of Calvary and apply it for the person's own intention. This is emphasized in § 2 of the present canon. That is, the stipend for the Mass is not a sort of tribute or tax; nor is it the economic retribution for a service rendered. This matter is "res sane gravis multumque postulans prudential,"[15] and throughout history the pastors of the Church have shown a diligent vigilance on this point.

In the ninth to eleventh centuries there were oblations for Masses; they were spontaneous offerings of the faithful. However, "it was already a long time since the clergy had the tendency to claim a tax determined by a tariff for these services."[16] The Church strove to retain the gratuity of ministerial services and reminded priests that they were forbidden to demand a retribution.[17]

The Council of Trent issued a clear orientation on this subject: the bishops should prohibit "Importunas atque illiberales eleemosynarum exactiones potius quam postulations."[18]

The detailed normative determination of the Church on this delicate subject effectively avoids the danger of uses more or less related to simony.[19]

13. A. ALONSO LOBO-L. MIGUÉLEZ DOMÍNGUEZ-S. ALONSO MORÁN, *Comentarios al Código de Derecho Canónico*, II (Madrid 1963), p. 232, note 125.
14. Cf. mp *Firma in traditione*, in *AAS* 66 (1974), p. 308.
15. Cf. ibid., p. 309.
16. A. FLICHE-V. MARTÍN, "Historia de la Iglesia," vol. VII: *El orden feudal*, given by E. AMANN and A. DUMAS (Valencia 1975), p. 282.
17. Cf. ibid.
18. *Sess.* XXII, *Decretum de observandis*. Cf. MANSI, *Sacrorum Conciliorum nova et amplissima collectio*, vol. 33 (Graz 1961), col. 132. Cf. also JUNGMANN, *El Sacrificio de la Misa...*, cit., p. 654, note 127.
19. Cf. *Comm.* 13 (1981), p. 430. Regarding the history of Mass stipends, cf. JUNGMANN, *El Sacrificio...*, cit., pp. 653–654.

5. Applying the Mass for a determined intention ("iuxta certam intentionem") according to the language of the canon, seems to assume the traditional doctrine of the so-called *fruits* of the Mass.[20] According to this, the "*stipend* corresponds to the application of the *special* fruit of the sacrifice"[21] (see commentary on c. 901).

6. The priest who *concelebrates* the Mass may also receive a stipend. To the norm of c. 824 § 1 *CIC*/1917, the *Coetus de sacramentis* for the revision of the norms added this legitimate possibility.[22]

7. The law does not consider as proper—as juridical—the obligation that a priest may have taken on from the faithful to celebrate a Mass for an *intention* (of the faithful). The law only intervenes when, further, the faithful offer an oblation (*stips*) for that purpose and the priest accepts it. This is the hypothetical situation generated by the regulation of cc. 945ff. However, the will of the Church obviously has a greater range, since the pastoral care surpasses what is strictly juridical: § 2 of c. 945 responds to this desire of the Church, that of the priest welcoming *in every case* the intentions of the faithful.

II. Paragraph 2 highlights the pastoral attitude that is necessary for the priest to have: to attend to the faithful and to celebrate, as much as possible the Mass for their intentions, whether he receives a stipend or not. Priests must cultivate poverty and selflessness with fervent apostolic spirit (cf. *PO* 21), attending therefore with utmost availability—even without a stipend—to the petitions of the faithful. It is, therefore, true that every priest may (*licet*) receive a stipend, but *what matters most* is—the Church in any case must provide for the dignified sustenance of the clergy[23]—that he *celebrate the Mass for the intentions of the faithful even if he will not receive any stipend.* This is what seems to be emphasized by § 2 of this canon.

1. This fervent recommendation is a *novelty* of the *CIC* regarding the *CIC*/1917.[24] It was introduced by the appropriate *coetus* for the revision of the Code, with no official evidence of any norm or document that could be considered as a source of what is stated in this paragraph.

2. The stated acquiescence of priests regarding the petitions of the faithful to apply the Mass for their intentions is a specific and important manifestation of the necessary ministry of service that they owe the people, since the "mission entrusted by the Lord to the pastors of his people is a real service, that in the sacred scriptures is called *diaconia*, that is, ministry" (*LG* 24). Furthermore, being mindful that "the custom of asking for

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20. Regarding this point one should refer to A. ALONSO LOBO, *Comentarios al Código...*, cit., pp. 210–211; also J.A. SAYÉS, *El misterio eucarístico* (Madrid 1986), pp. 344–347.
21. Cf. A. ALONSO LOBO, *Comentarios al Código...*, cit., p. 235. In the same vein, cf. F. GÓMEZ-SALAZAR, *Instituciones de Derecho Canónico*, T. II (León 1891), p. 484.
22. Cf. *Comm.* 4 (1972), p. 57; also c. 951 §2.
23. Cf. *PO*, 20 and 21; cf. also cc. 281 and 1274.
24. Cf. *Comm.* 4 (1972), p. 57.

private intentions ... the celebration of the Holy Mass for a particular intention is always a testimony of living faith." This gives support to the stated availability of the priest.[25]

3. The legislator shows here a special determination to encourage in this point the pastoral spirit of the priests. He brings up the fact that the expression used to urge them strongly (*enixe commendatur*) to follow this manifestation of the pastoral meaning should be the same as that employed by c. 904 when it also exhorts the priests to the daily celebration of the Eucharistic sacrifice.

4. In this fervent recommendation that we are discussing, the *CIC* is conscious of all the faithful of Christ, but mainly of the *needy*, the poor. This special attention of the Church to those who lack abundant or merely ordinary resources is a living reflection of that messianic signal that Jesus Christ mentions together with other miraculous signals: "the poor are evangelized" (cf. Mt 11:5).

5. The priest needs sufficient inner freedom to attend to the intention of the Mass intentions of the faithful "etiam nulla recepta stipe." That is, it is necessary—and the paragraph makes reference to this—for the priest not to make his ministry conditional on whether he receives stipends or not. However, one must not forget not only the liceity of receiving stipends (1 §) but—as Agustoni asserts—"the majority of the priests in this world, even in our present day society, still support themselves resorting to the offerings for the celebration of the masses."[26] Therefore, to facilitate the proper spiritual freedom of the priest, it is necessary to promote his *sufficient economic freedom* both by urging the responsibility of the faithful in the support of the clergy—as made evident in c. 222 § 1—as on the side of the ecclesiastic hierarchy, by trying to provide, inasmuch as possible, more reliable means of sustenance. This is something legitimate and even good, and sometimes necessary to support the priests financially, since the stipend offered for the celebration of the Mass for a specific intention never ceases to be a voluntary offering of the faithful, and is never actually required. The ecclesiastical organization apparently must avoid the habit of relying on such donations as the principal means of sustenance of the clergy, as it in fact does by trying to apply the foresights of Vatican Council II and *CIC* (cf. *PO* 20–21; cc. 281 and 1274).

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25. Cf. G. AGUSTONI, "En defensa de una tradición antigua y piadosa. Comentario al decreto de la Congregación para el clero sobre las misas colectivas," in *L'Osservatore Romano*, no. 13, March 29, 1991, pp. 5 and 12 (English edition: March 25, 1991, pp. 2 and 10).

26. Cf. G. AGUSTONI, "En defensa de una tradición antigua y piadosa...," cit., p. 12.

946 Christifideles stipem offerentes ut ad suam intentionem Missa applicetur, ad bonum conferunt Ecclesiae atque eius curam in ministris operibusque sustinendis ea oblatione participant.

Christ's faithful who make an offering so that Mass can be celebrated for their intention, contribute to the good of the Church, and by that offering they share in the Church's concern for the support of its ministers and its activities.

SOURCES: PAULUS Pp. VI, m. p. *Firma in traditione,* 13 iun. 1974 (*AAS* 66 [1974] 308); Secr. St. Normae, 17 iun. 1974

CROSS REFERENCES: cc. 222 § 1, 945, 951 § 1

COMMENTARY

Joaquín Calvo-Álvarez

Canon 946 no longer emphasizes the *lawfulness* (see commentary on c. 945), but the *goodness* of the institution of the stipend.[1]

1. The contents of this canon is a *novelty* in regard to the regulation that *CIC*/1917 contained on this subject. The reason for including it is to throw light on this pious usage, while being mindful of the details of its long history.[2]In the sober and succinct writing of the canon is surmised a tight synthesis of the introductory section of the *Motu proprio Firma in traditione* of 1974.[3]

2. The Church of Christ, during its earthly period, although it was not instituted in order to seek earthly glory, nonetheless needs "human means to accomplish its mission" (cf. *LG* 8). The necessary use of these means, in the two-thousand-year life of the Church, has been frequently a reason for scandal by *spiritualistic* visions and attitudes that, upon rejecting the magisterium of the Church, have not understood the mystery of the word incarnate and its consequences as fully as it is possible in this world.[4]

1. On this point, Cf. G. AGUSTONI, "En defensa de una tradición antigua y piadosa. Comentario al decreto de la Congregación para el clero sobre las misas colectivas," in *L'Osservatore Romano*, no. 13, March 29, 1991 (English edition: March 25, 1991, pp. 2 and 10).

2. Cf. *Comm.* 4 (1972), p. 58.

3. Cf. *AAS* 66 (1974), p. 308; the text of this mp of Paul VI, also in *Comm.* 6 (1974), pp. 117–119.

3. The canon emphasizes that the faithful, as they make their offering to be applied to the Mass for their intention, share in the concern of the Church for the support of its ministers and for maintaining its works and activities. Therefore, the ecclesial dimension stands out, inseparable from the purely religious or reverential dimension.[5]

4. In the first place, *the faithful by their offering of* "stips" *share the concern of the Church for the support of its ministers.* "The Church always felt that it was necessary to assure a decent existence to the ministers of the worship."[6] *CIC*/1917, also mindful of the problem of adequate support of the ministers of the Church, demanded a *title* for the sacred ordination; this requirement had to be fulfilled before the candidate could receive the ordination.[7] With the new *CIC* "the new configuration of the institute of incardination ... makes unnecessary the requirement of the canonical *title* of ordination."[8] In any case, by means of the *stips*, the faithful continue to contribute to the support of the clergy, though it is clear that it is not the only system for that sustenance. That is the clarification that the secretariat and consultants of the Code Commission made to one of the general *animadversions* brought up by one of the Fathers of the commission. He planned to seek *another* system for the sustenance of the clergy without any connection *ratione justitiae* between the Eucharistic celebration and the *stips*. It was answered that the discipline proposed is rooted in a very ancient tradition of the Church (cf. Paul VI, mp *Firma in traditione*, June 13, 1974), and it is not the only system for the sustenance of the clergy, where it is in effect necessary for it to be regulated by clear and transparent norms so as not to provide an opportunity for the abuses that easily slip by in this matter.[9]

Considering the facts, it must be taken into account that especially today, in more than a few areas, the *stips* offered on the occasion of the Eucharistic celebration are *almost the only source* of the economic means needed to attend to the various necessities of the Church as well as to the sustenance of the ministers.[10] It seems clear that such widespread dependency of the clergy in regard to their own sustenance in relation to the

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4. Cf. *LG* 8. Also J. CALVO-ALVAREZ, "Iglesia y Derecho," in *Manual de Derecho Canónico* (Pamplona 1991).

5. Cf. mp *Firma in Traditione*, cit., p. 308. Regarding the origin and purpose of the Mass *stipes*, cf. BENEDICT XIV, *De Synodo Diocesana*, lib. V, ch. VIII, *De eleemosina Missarum*, yr. 1767.

6. Cf. R. NAZ, "Honoraires des Messes," in R. NAZ (Dir.), *Dictionnaire de Droit Canonique*, col. 1203.

7. Cf. ALONSO LOBO in *Comentarios al Código de Derecho Canónico*, II (Madrid 1963), p. 238.

8. Cf. T. RINCÓN-PÉREZ, "Disciplina Canónica del culto divino," in *Manual de Derecho Canónico* (Pamplona 1991), p. 569.

9. Cf. *Comm.* 15 (1983), p. 200.

10. Cf. *Comm.* 4 (1972), p. 58.

stipends of Masses of the faithful is a real situation that is quite desirable to overcome.

5. As we have seen, and as the canon points out, the faithful, besides contributing to the sustenance of the ministers through the *stips*, also participate in the *sustenance of the activities of the Church.*

In the work of developing the new *CIC*, it was originally included in a second paragraph of this canon that for this purpose, the authority who would administer the contributions of the faithful would be primarily the diocesan bishop, always respecting the will of the contributors. Thus it was felt that the diocesan bishop was the appropriate authority to administer these economic means and, to an appropriate extent, attend thereby to the needs of the Church in his own diocese.[11] However, in the revision of the *schema* by the appropriate *Coetus studiorum* during the meeting days October 9–12, 1978, in the cited paragraph submitted to the authority of the diocesan bishop in this matter, it was decided by the agreement of all the members of the *coetus* to have it suppressed, in acknowledgment of the objections raised.[12] It seems clear that this suppression is related to the submission to the *ordinary*—not to the diocesan bishop—done by c. 951 § 1, when discussing the appropriateness for establishing the objectives that must be pursued with the other stipends that a priest may receive who celebrates more than one Mass on the same day.

6. "The faithful who offer a stipend to have the Mass applied for their intention, *contribute to the good of the Church*" states the canon we are discussing. This is a specific way of "helping the Church with its needs," a duty that all of the faithful have, as indicated in c. 222 § 1. The faithful need to be instructed on this subject with a specific catechesis by means of which it will be underlined, among other points, the ascetic importance of alms-giving in the Christian life and the just distribution of one's own goods on behalf of the Church and its apostolic activities.[13]

11. Cf. ibid.

12. Cf. *Comm.* 13 (1981), pp. 431–432.

13. Cf. CC, Decr. *Mos iugiter*, in which some rules are laid out regarding stipends, which priests ought to receive for the Masses that they celebrate, February 22, 1991, published on May 6, 1991 in *AAS* 5 (1991), pp. 443–446; for concrete examples, cf. art. 7, in p. 446. Cf. this same document in *L'Osservatore Romano*, no. 13, March 29, 1991, p. 5 (161) (English edition: March 25, 1991, p. 2).

947 A stipe Missarum quaelibet etiam species negotiationis vel mercaturae omnino arceatur.

Even the semblance of trafficking or trading is to be entirely excluded from Mass offerings.

SOURCES: c. 827; SCCouncil Causa, 10 ian. 1920 (*AAS* 12 [1920] 70); SC-Council Causa, 16 apr. 1921 (*AAS* 13 [1921] 532–533)

CROSS REFERENCES: cc. 286, 848, 945 § 1, 946, 951, 952, 1264,2°, 1272, 1274, 1321 § 1, 1380, 1385

COMMENTARY

Joaquín Calvo-Álvarez

The institution of the stipend for the Mass is licit (c. 945 § 1), and this type of assistance given by the faithful for the sustenance of their ministers and for the needs of the Church is even praiseworthy (c. 946). Nonetheless, it is entirely necessary to protect the purity of the institution. The canon we are now perusing makes reference to this. It is literally identical to its predecessor, c. 827 *CIC*/1917. All those who were part of the study group of the commission for the reform of the Code felt it was all right to leave it as it was, without change.[1]

1. One of the Fathers of the commission introduced a general *animadversio* referring to the regulation intended for the entire *CIC* about this subject. He stressed in the objection that it looked to him like an antiquated system and that it smacked of business. This Father was in favor of the bishops' conferences abandoning it. The secretariat and the consultants replied that a system cannot be imposed. However, wherever it is in use it is necessary to establish clear norms, since there are more than a few dangers of commerce, avarice and injustice hidden in this subject.[2]

2. In regard to this, the Church has always been mindful of the need to avoid even the appearance of negotiation or trading.[3] The mandate of this canon obligates all of the faithful and not only the clergymen.[4] In any case,

1. Cf. *Comm.* 13 (1981), p. 433.
2. Cf. *Comm.* 15 (1983), p. 200.
3. Cf. SCCouncil, Decr. *Ut debita*, of May 11, 1904, arts. 8ff, in *ASS* 36, 672ff. Cf. also the text of the spoken Decree in J.B. FERRERES, *Las Misas manuales según la disciplina vigente* (Madrid 1924), Appendix II, pp. 305–310. Also the interpretation of discipline at that time enforced, before the *CIC*/1917, in the thorough work of M. MOSTAZA, *Las misas de estipendio* (Bilbao 1912).
4. Cf. J.B. FERRERES, *Las Misas manuales...*, cit., pp. 72–73.

for the clergymen it can be considered a more concrete statement—otherwise quite specific, about a particularly serious matter—of the general prohibition of c. 286. Conduct contrary to what is prescribed by c. 947 is not always condemned by the legislator, but it is when profit has *in fact* been illegitimately obtained with the Mass stipend, as anticipated by c. 1385. Strictly speaking, conduct contrary to c. 947 is not simoniac conduct, since that conduct penalized in c. 1380 presupposed a *pact*,[5] and, obviously, provided that the serious accountability required in general terms by c. 1321 § 1 is present.

The crime of simony is of the utmost danger in this matter, but it turns into a remote danger if the established norm is diligently complied with. In *CIC*/1917, after c. 727 defined what is involved in simony, it was pointed out in c. 730 that "there is no simony when dealing with something temporal, and not spiritual, but on this occasion by virtue of a just title recognized by the sacred canons or by a legitimate custom." In this delicate matter the Church safeguards the divine and ecclesial integrity of the sacramental treasure (cf. c. 848). However, it has given special custody to the specific *oblatio,* which is the *stips* of the Mass by issuing, for example, its own norm when it is a question of setting its legitimate value (cf. c. 952 §1), different from the usual norm established for the bulk of the offerings made on occasion of the administration of sacraments and sacramentals (cf. c. 1264, 2°).

The canon mandates, in order to avoid in every case—*omnino arceatur*—any appearance of negotiation or trade in this matter. The four possibilities of illicitness contained in the old c. 825 *CIC*/1917 have been entirely suppressed. The reason for the suppression was explicitly expressed by the secretary of the Code Commission: the casuistic interpretation should be left to the moralists; it is useless to maintain that norm since it refers to the application of a general principle.[6] Thus, the precept of c. 947, with its general and absolute diction, is believed to be sufficient for the intended effects.

3. Other particularly clear norms about guaranteeing the cleanliness of the institution that we are discussing are found in cc. 952 and 951: the first of these, by determining the source authorized *to set the amount* of the stipend of the Mass; the second by explaining that a priest, by celebrating more than one Mass on the same day may receive as many stipends as Masses (which does not preclude what is set down in § 2) but may *only* claim *one stips* as his own.

5. Cf. J. ARIAS, commentary on c. 1380, in *Pamplona Com.* Cf. also L. MIGUÉLEZ, commentary on c. 727, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976).

6. Cf. *Comm.* 13 (1981), p. 434.

4. As we have already observed, this matter, because it considers a method of supporting the clergy, requires a balanced regulation. The present c. 947, with its rigorous and clear prohibition, counterbalances the lawfulness and kindness emphasized in the two previous canons, respectively. Furthermore, although it is true that the pastors have to make sure that this "very ancient and salutary usage for the souls and the entire Church is not lost,"[7] one must not forget the organizational effort promoted by the last Council (cf. *PO* 20), referring to a stable and effective way to provide a dignified subsistence for the clergy (cf. cc. 1272 and 1274). Affirming this objective more and more will no doubt help to attain the conditions adequate to facilitate the strict compliance with the norms included in cc. 945–958.

7. Cf. CC, Decr. *Mos iugiter*, in which some rules are laid out regarding stipends, which priests ought to receive for the Masses that they celebrate, February 22, 1991 and published on May 6, 1991 in *AAS* 5 (1991), pp. 443–446; for concrete examples, cf. art. 2.3.

948 Distinctae applicandae sunt Missae ad eorum intentiones pro quibus singulis stips, licet exigua, oblata et acceptata est.

Separate Masses are to be applied for the intentions of those for each of whom an offering, even if small, has been made and accepted.

SOURCES: c. 828; SCCouncil Causa, 9 iul. 1921 (*AAS* 13 [1921] 502–504)

CROSS REFERENCES: cc. 949, 952

COMMENTARY

Joaquín Calvo-Álvarez

Each stipend offered and accepted by the future celebrant obligates him to apply the Mass for the intention designated by the faithful who made the oblation. A separate Mass must be celebrated for each intention for which a stipend has been offered (and accepted). This has to do with the classical principle on the subject: *tot Missae quot stipendii*. That is, as many Masses must be celebrated as stipends were accepted by the celebrant for one or several intentions. It has its basis in that each *stips* is offered and accepted for the celebrant to apply a Mass for a designated intention: the one the offerer asked for. If there are 20 Mass stipends for a single intention, the accepting celebrant has to apply 20 Masses for that intention. If there is one Mass stipend for an intention, the accepting celebrant has to apply a Mass for that intention. If a stipend is involved, each celebrant has to apply the Mass for a designated intention: as many Masses as stipends the celebrant agreed to receive.

The same prescription of the old c. 828 *CIC*/1917 is substantially maintained. The change in writing emphasizes the specific *intention* that the acceptor of the offering obligates himself to have in the Holy Mass that is to be celebrated. It is the intention of the faithful that the priest accepted to have in the future Mass by simultaneously accepting the *stips*.

2. Whoever accepts the stipend is *obligated* to celebrate the Mass for the intention designated by the faithful. It is an actual obligation of justice that the law specifies and regulates. Thus, for example, when he determines that the obligation arising from the acceptance of the stipend offered does not depend on the stipend conforming to the diocesan amount (cf. 952), the acceptor remains obligated, even if the *stips* is small (cf. 948, *in fine*). The following canon also emphasizes how the priest who accepted the stipend *obligatione tenetur*. Emphasizing the profiles and

requirements of this obligation is not without interest. An instruction from *AP* of July 15, 1984, pointed out that it was not unusual that priests easily felt exempted from this sort of burden and displayed a false criterion by judging that so long as they assign the Mass stipends to good purposes they have done enough about the obligation they undertook, even if they don't apply the Masses "iuxta fines intentos ab oblatoribus."[1] Thus, when the stipend is received, the obligation to celebrate the Mass for that intention begins.[2]

3. It is nonetheless imperative *not to defraud the pious will of the faithful* whose effective respect has to be given priority.[3] It was probably to guarantee that point to the utmost, together with other important factors in the development of the new Code, that a second paragraph of the canon was suppressed, which literally read as follows: "licet autem unam eandemque celebrare et applicare Missam ad intentionem plurium, qui ad communem pro eiusdem Missae celebratione et applicatione stipem oblatam ad libitum contulerint."[4] What guaranteed the legitimacy of this assumption in principle was the freedom of these faithful to consent *ad libitum* to a common intention in the celebration and application of the Mass. However, the secretary of the commission reported that he had received two letters regarding the abuses of the *sic dictae Missae communitaria,* which found some support in the text of the intended paragraph. Therefore, he proposed that the paragraph be suppressed. Finally, it was suppressed as a result of a vote of four to three.[5]

Regarding the very subject of the so-called *collective Masses,* by 1972 it was clearly noted how the tendency to reduce the amount of the offering to the priest in favor of the application of the Mass for private intentions[6] was gaining ground. Galea pointed out the need for a thorough and reliable study on the subject that would not neglect any of the factors involved.[7]

On May 6, 1991, a CC decree was issued to take care of putting order into the situation.[8] Article 1.2 articulates the conduct that is condemned as a violation of the norm contained in c. 948, regarding those "priests who indiscriminately collect stipends for the celebration of the masses in

1. Cf. X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae,* vol. VI (Rome 1987), col. 8875.
2. Cf. WERNZ-VIDAL, *Ius Canonicum,* IV, *De rebus* (Rome 1934), pp. 84f.
3. Cf. the introductory words of the Decr. *Ut debita,* of the SCCouncil, of May 11, 1904, in J.B. FERRERES, *Las Misas manuales según la disciplina vigente* (Madrid 1924), p. 305.
4. Cf. *Comm.* 13 (1981), p. 434.
5. Ibid.
6. Cf. D. GALEA, "Ordinamento circa l'elemosina delle SS. Messe," in *Apollinaris* 45 (1972), pp. 80 and 83.
7. Cf. ibid., p. 83.
8. Decr. *Mos iugiter,* in which some rules are laid out regarding stipends, which priests ought to receive for the Masses that they celebrate, February 22, 1991, in *AAS* 5 (1991), pp. 443–446.

keeping with private intentions and, by accumulating them, unknown to the offerers, fulfills them with one single holy mass celebrated according to a so called 'collective' intention." Once this condemned practice is defined, an assumption which is *tolerated* in an exceptional manner becomes established. The difference with the foregoing assumption is based primarily on the *freedom of the faithful to consent to this procedure* of the priests (cf. art. 2.1).[9] This free and effective consent would be supported by the *requirement to give advance and explicit notice* of this practice to the offerers (cf. ibid.). These conditions are completed with the specifications of paragraph 2 of art. 2: "... it is necessary to announce publicly the time and place where the holy mass will be celebrated, and no more than twice a week." The exceptional nature of this tolerated manner of acting is exposed in art. 2.3, which declares that the pastors, in their respective dioceses, have to be aware that if *this tolerated practice became excessively widespread, it would be considered an abuse.*

Rincon-Perez states that the said decree is legally valid since it establishes an *exception* to c. 948,[10] whose norm must be considered as customary and routine. This author also states that according to c. 18, the exceptional nature of the norm of art. 2.1 of the decree of the CC calls for strict interpretation.[11] Manzanares, though mindful of all the cautions set down by the decree about the accepted practices, thinks that this norm is questionable because it weakens the principle that for centuries supported the doctrine on this matter: *tot Missae quot stipendia.*[12] He also maintains, in commenting on the decree, that if the consent of the faithful is the fundamental principle for celebrating those multi-intentional Masses, it is appropriate to ask why the application of that principle is only valid twice a week, if the faithful demand and want it more often.[13] This opinion does not seem to stand on firm ground because it is one thing for full consent to be an essential element for the legitimacy of this practice, and another for the *petition*—to a greater extent than the *consent*, strictly speaking—of the faithful to shape this subject in such a way that the discipline of its stability depends for all purposes on their wishes.

9. The importance of the prior and freely given consent of the faithful is particularly stressed in the *Causa* of the SCCouncil, of July 9, 1921, in *AAS* 13 (1921), pp. 501–504. One should keep in mind that this document was cited as a *fons* for c. 948.

10. Cf. T. RINCÓN-PÉREZ, "El Decreto de la Congregación para el Clero sobre acumulación de estipendios," in *Ius Canonicum* 31 (1991). pp. 627–656; specifically, p. 648.

11. Cf. ibid.

12. Cf. J. MANZANARES, "De stipendio pro Missis ad intentionem 'collectivam' celebratis iuxta Decretum 'Mos iugiter,'" in *Periodica de re canonica* 80 (1991), pp. 579–608; for a concrete explanation, p. 605.

13. Cf. ibid.

949 **Qui obligatione gravatur Missam celebrandi et applicandi ad intentionem eorum qui stipem obtulerunt, eadem obligatione tenetur, etiamsi sine ipsius culpa stipes perceptae perierint.**

One who is obliged to celebrate and apply Mass for the intention of those who made an offering, is bound by this obligation even if through no fault of his own the offering received has been lost.

SOURCES: c. 829

CROSS REFERENCES: cc. 945 § 2, 199,5°, 13 § 2,2°

COMMENTARY

Joaquín Calvo-Álvarez

It is a specific case noted with a certain illustrative character that facilitates a firm perception of the rigor of the *debitum*: if the stipend offered has been accepted, an obligation of justice will be established that is only extinguished through compliance with the obligation incurred. The secretary of the Code Commission did not think it was necessary to maintain the norm of c. 829 *CIC*/1917 (forerunner of the present 949[1]). He adhered to the criterion of avoiding prescriptions of a casuistic nature, thinking that it was enough to leave the general principles established firmly. If these were clear—his thoughts would be understood this way—the consequences would be clear, whenever the former had to be interpreted in order to apply them to the changeable and extremely variable complexity of the real assumptions.[2] However, in this case the relator and two consultants did not share the criteria of the secretary—the canon was then retained with slight grammatical modifications.[3]

1. In case of the loss of the stipend already received, even through no fault of the priest, the obligation to celebrate and apply the Mass to the intention of whoever offered the *stips* is retained. That is, the unfortunate loss of the stipend does not cancel out the worth of the *debitum*, which stands. Here, priority attention to the pious intention of the faithful and its efficacy is stressed. The Church expressed in this norm—as in others referred to on this subject—a *profound sense of justice*, which is of itself inseparable from an authentic and *profound pastoral sense.* In commenting on the norms that existed on this subject at the time, M. Mostaza said that

1. Cf. *Comm.* 13 (1981), p. 434.
2. Cf. ibid.
3. Cf. ibid.

"greater guarantees of security could not have been demanded or even wished for in any administration."[4]

2. The *a quo* moment from which springs the obligation to celebrate the Holy Mass for the intention of the faithful is the moment during which the *stips* is received ("stipes perceptae," says the canon). Its foundation is that receiving the *stipend* includes and expresses acceptance of the obligation.[5] Miguélez points out in commenting on the corresponding canon of *CIC*/1917, that if the stipends vanish before they have been received, the obligation to apply the Masses ceases.[6] The logic of the reasoning is clear; rather than *ceasing*, what actually happens is that the obligation *never actually existed to begin with.* Here, obviously, we continue to refer to the obligation of justice that the law contemplates and regulates. Another could be the moral valuations that we avoided here, as to the extent to which the priest would be obligated by having agreed to celebrate the Mass or Masses with an established intention, if the stipend vanishes before it is received. Before the law it would be *advisable* to celebrate that Mass or Masses (cf. c. 945 § 2), but never would it be required to admit—by law—that a real obligation has emerged.

3. Therefore, with the delivery and acceptance of the *stips*, the obligation to celebrate the Mass comes into being, applying it to the intention established by the donor. There have been a diversity of theories or explanations about the *nature* of this obligation. Rincon-Perez, limits himself to calling it *an obligation of justice* emerging *between the priest* who accepted the stipend to apply it for a determined intention *and the faithful* who offered the stipend.[7] This does not seem to be the appropriate place to stop and test the most accurate qualification of this obligation. For Piacentini, the relationship that emerges between the celebrant and the faithful is simply *particular.*[8]

4. The special strength and permanence of the obligation that we have just analyzed is expressed in c. 199,5°, according to which "the stipends and charges of the Masses are not subject to prescriptions." Therefore, it may be held that the norms referring to the stipends refer to the observance of *public order.* This being the case, the itinerant priest is subject, in this matter, to the law of the land wherever he is (cf. c. 13 § 2,2°).

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4. *Las misas de estipendio* (Bilbao 1912), p. 41.

5. Cf. c. 955 §1, *in fine.*

6. Cf. commentary on c. 829, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976); with respect to c. 949 *CIC*, J. MANZANARES agrees with L. MIGUÉLEZ: cf. his commentary in *Salamanca Com.*

7. Cf. T. RINCÓN-PÉREZ, "El Decreto de la Congregación para el Clero sobre acumulación de estipendios," in *Ius Canonicum* 31 (1991), p. 646.

8. Cf. M. PIACENTINI, "Elemosina di Messe," in *Novissimo Digesto Italiano* 6 (1960), pp. 436–437. For a monograph on this topic, cf. Z. VERALTA, *Natura giuridica del rapporto di offerta e accettazione di "stipendium missa,"* (Rome 1942).

950 **Si pecuniae summa offertur pro Missarum applicatione, non indicato Missarum celebrandarum numero, hic supputetur attenta stipe statuta in loco in quo oblator commoratur, nisi aliam fuisse eius intentionem legitime praesumi debeat.**

If a sum of money is offered for the application of Masses, but with no indication of the number of Masses to be celebrated, their number is to be calculated on the basis of the offering prescribed in the place where the donor resides, unless the donor's intention must lawfully be presumed to have been otherwise.

SOURCES: c. 830

CROSS REFERENCES: cc. 531, 15 § 2, 1584, 102, 952 §§ 1 et 2

COMMENTARY

Joaquín Calvo-Álvarez

This canon deals with a case in which a sum of money has been received for the application of Masses, but the receiver doesn't have enough information with which to assume full responsibility for the donor's intention. He does know that the donor's intention is the application of Masses, but he is uncertain about *how many* Masses the donor wanted to have celebrated.

1. The canon shows some differences of a grammatical nature from its precedent, c. 830 *CIC*/1917. We know that the language of the *schema* was also changed, once the objections raised were discussed and considered,[1] but we will ignore the details of that discussion.

2. Although the information which would indicate the number of Masses desired by the donor is not complete in this case, it is known, as we have just seen, that the money delivered was designated for the application of the Masses. Therefore, there is a determination as to the *objective* of the donation. This, to be sure, excludes the possible application of what was anticipated in c. 531 referring to undetermined donations delivered on occasion of the occurrence of some parish function.

3. This canon emphasizes the priority given to the will of the donor. If this were known, only the rejection or acceptance of the obligation would be acceptable: in the case of acceptance, either to carry it out

1. Cf. *Comm.* 13 (1981), pp. 434–435.

personally or, if it is not possible, to entrust another priest the carrying out of the obligation in question.[2] But, not knowing the number of Masses wanted by the donor, the canon resorts to *presumptions*. On the one hand, what could be called a *presumptio iuris* is established (cf. c. 1584): the number of Masses "is to be calculated on the basis of the offering prescribed in the place where the donor resides." It is thus *presumed* that, on principle, the donor would know the stipend that is in effect in the place of residence—since ignorance of a law cannot be presumed (cf. c. 15 § 2). This being so, it would have been easy to want the same thing presumed by the *praesumptio iuris*: that is, that as many Masses may be celebrated as can be applied to the stipend in force in the diocese of residence. However, on the other hand, it will be necessary to postpone this legal presumption providing it be feasible to presume, legitimately, that the donor's intention was different. But this legal presumption may only be resorted to as a stopgap, whenever there is not sufficient reason to presume that the donor's intention was different. It is then a question of inquiring—by the use of presumptions, one general and the other *ad casum*—what the will of the donor may have been, which cannot be known with certainty, and attempting to accept as such, abiding by the intention thought to be most likely or reasonable. The canon thus admits, in the face of a *praesumptio iuris* a legitimate opposite presumption in each factual case. The one who receives the amount of money will be the one to decide whether in that case the legitimate opposite presumption to the legal presumption is or is not appropriate. Manzanares gives an example in which there would be reason to legitimately presume that the donor did not intend the priest to apply as many Masses as would be consistent with the stipend "in loco in quo oblator commoratur". It could legitimately be presumed that his intention was different if his will to favor the celebrant priest were *manifest*.[3]

4. The legal stopgap presumption, according to which—there being no legitimate reasons against it— a general solution is offered to the problem presented, consists, as we well know, in determining the number of Masses "attenta stipe statuta *in loco in quo oblator commoratur*." With that intention, the recipient of that amount of money must find out the *stips* established *for the place of residence of the donor* in case he knows the place in question. It could be the place of the person's domicile or quasi-domicile (cf. c. 102).

5. Let us remember that in *CIC*/1917 the forerunner of the present c. 950 was c. 830. We know that there have been grammatical changes and that discussions also took place in light of (see *supra*, no. 1 of this

2. Cf. CC, Decr. *Mos iugiter*, in which some rules are laid out regarding stipends, which priests ought to receive for the Masses that they celebrate, February 22, 1991, arts. 1.1 and 5.1, and published on May 6, 1991 in *AAS* 5 (1991), pp. 443–446.

3. Cf. J. MANZANARES, commentary on 950, in *Salamanca Com.*

commentary) the changes in terminology. So, according to c. 830 *CIC*/1917, in order to calculate the number of Masses that should be celebrated, it had to be done *secundum eleemosynam loci*. On this point, Miguélez commented that "the alms referred to in this canon is the *usual for the place* where the giver lived, even if it is different from the diocesan rate, as is often the case in cities of some importance where the usual and current stipend is greater than the one in the rest of the diocese."[4] Thus a distinction was made by this author between what he called the *diocesan rate* and the usual alms in one or more places in the diocese. According to this, the canon would not refer to the stipend in effect in the diocese (cf. c. 831 §§ 1 and 2 *CIC*/1917) but specifically to "*eleemosynam loci* in quo oblatur morabatur," in the sense noted.

However, it does not seem that the interpretation of Miguélez can be maintained according to the present drafting. The language used in the present c. 950 ("attenta stipe *statuta* in loco") seems to stress, on the one hand, the intervention of the ecclesiastical authority in the determination of the size of the *stips*. On the other hand, according to c. 952 (see commentary) it is the bishops of the ecclesiastical province—supradiocesan jurisdiction—who have the authority to determine "quaenam ... sit offerenda stips." Thus, in the present *CIC* the authority who establishes the size of the *stips* is not diocesan; it is not the local ordinary where the diocese is located, as established in c. 831 § 1 *CIC*/1917. Together with this, § 2 of c. 952 pointed out that wherever the decree set forth in § 1 is missing, the custom in force in the diocese will be followed. Thus, according to these data, in the regulation of the present *CIC* there does not seem to be room for admitting—even by alluding to diocesan custom—several rates for the stipend in the same diocese. On the contrary, the legislator seeks a supradiocesan jurisdiction—the ecclesiastical province—as a territorial unit where, on principle, a uniform *stips* can be established. Thus, if on principle, the option followed is for the stipend of each diocese to be the same as in other dioceses in the same province, it would not seem to conform to this legislative option to accept several customs with the force of law (cf. c. 23ff) regarding this subject in the same diocese.

4. Cf. L. MIGUÉLEZ, commentary on c. 830, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976).

951 **§ 1. Sacerdos plures eadem die Missas celebrans, singulas applicare potest ad intentionem pro qua stips oblata est, ea tamen lege ut, praeterquam in die Nativitatis Domini, stipem pro una tantum Missa faciat suam, ceteras vero in fines ab Ordinario praescriptos concredat, admissa quidem aliqua retributione ex titulo extrinseco.**

§ 2. Sacerdos alteram Missam eadem die concelebrans, nullo titulo pro ea stipem recipere potest.

§ 1. A priest who celebrates a number of Masses on the same day may apply each Mass for the intention for which an offering was made, subject however to the rule that, apart from Christmas Day, he may retain for himself the offering for only one Mass; the others he is to transmit to purposes prescribed by the Ordinary, while allowing for some compensation on the ground of an extrinsic title.

§ 2. A priest who on the same day concelebrates another Mass may not under any title accept an offering for that Mass.

SOURCES: § 1: c. 824 § 2; SCCouncil Causa, 10 nov. 1917 (*AAS* 10 [1918] 368–373); SCCouncil Causa, 8 maii 1920 (*AAS* 12 [1920] 536–549); CodCom Resp. 13 dec. 1923 (*AAS* 16 [1924] 116); SCCouncil Resol., 13 nov. 1937 (*AAS* 30 [1938] 101–103); PAULUS Pp. VI, m. p. *Firma in traditione*, III[a], 13 iun. 1974 (*AAS* 66 [1974] 308); Secr. St. Normae, 17 iun. 1974
§ 2: SCDW Decl. *In celebratione Missae*, 7 aug. 1972 (*AAS* 64 [1972] 563); PAULUS Pp. VI, m. p. *Firma in traditione*, III[a], 13 iun. 1974 (*AAS* 66 [1974] 308); Secr. St. Normae, 17 iun. 1974

CROSS REFERENCES: § 1: cc. 905 §§ 1 et 2, 946, 952 §§ 1 et 2, 948, 950, 955 § 1, 901, 388 § 1, 534 § 1, 5 § 1, 6 § 2, 945, 1272, 295 § 1, 268 § 1, 134, 520 § 2
§ 2: cc. 945 § 1, 905

COMMENTARY

Joaquín Calvo-Álvarez

I. Paragraph 1 of the present canon must be read with special attention since in a not overly extended text there is an accumulation of statements that we will undertake to review. It seems that the essence of the precept is as follows: that *whoever* legitimately *celebrates more than one*

Mass on the same day can only claim as his own one of the several *stipends* that he may have received. If this is the core, then the norm coincides *substantially* with the discipline contained in c. 824 § 2 *CIC*/1917.[1]

1. In c. 824 § 2 *CIC*/1917, it was prohibited by common law for the priest who celebrated more than one Mass a day, and when one of the Masses was celebrated as a title of justice, to receive a *stipend* for the other. Thus the substance of this prohibitive norm remains in the present c. 951 § 1 in that although the priest may now receive stipends for the other Mass or Masses he may celebrate on that day, he can *only claim as his own one of the stipends received.* The reason for the norm contained in *CIC*/1917—and, as can be seen, substantially maintained in the present *CIC*—was thus expressed by Benedict XIV: "ut avaritiae et sordidis quaestibus adimeretur occasio vel saltem oblocutionibus silentium imponeretur."[2]

2. Thus, at present, the priest who legitimately celebrates (cf. c. 905) more than once a day may apply each for the intention to which the stipend was offered, but he can only claim as his own the stipend for one Mass. We know that the *stips* may correspond to the amount established by the ecclesiastical authority or to the amount established by custom (cf. c. 952). They could be below that amount (cf. c. 948) or, as the donor wills, they may be higher than the quoted amount (cf. cc. 950 and 955 § 1). Thus if in fact there is such a diversity of amounts in the stipends of the Masses that a priest celebrates on a given day, he is then free to claim as his own the *stips* he considers appropriate; however, he must deliver the other stipend or stipends in their entirety "for the purposes prescribed by the Ordinary."[3]

3. The principle that refers to claiming as his own only the stipend for one Mass bears an exception: on Christmas Day that norm ceases to be in effect. The justification is based in the solemnity of the day: that every priest may incur an extraordinary expense and may celebrate as the rest of the faithful the commemoration of the birth of the Lord.[4]

4. One of the Fathers of the Code Commission introduced a specific *animadversio* dealing with the language of the norm we have been studying as it appeared in the *schema* then published. This Father pointed out that according to the language of the precept, if a priest celebrated a Mass *ex titulo iustitiae*—a parish priest, for example who celebrated as an obligation of his calling the *pro populo* Mass—and also celebrated another Mass, he could receive a stipend for the second Mass. That Father pointed

1. Cf. *Comm.* 4 (1972), p. 58. An in-depth study of c. 824 § 2 *CIC*/1917, which makes ample use of the former law and jurisprudence, can be consulted in S. CASTILLO, "Las misas binadas y el título de justicia," in *Revista Española de Derecho Canónico* 1 (1946), pp. 235–244 and 493–506.

2. Cf. Const. "Quod expensis," August 26, 1748, in *Bullarium* vol. 2 (Venice 1768), p. 228. Cf. also *Causa* of the SCCouncil, May 8, 1920, in *AAS* 12 (1920), p. 539; cf. moreover J.B. FERRERES, *Las Misas manuales según la disciplina vigente* (Madrid 1924), p. 24.

3. Cf. *Causa* of the SCCouncil, May 8, 1920..., cit., pp. 539 and 540.

4. Cf. FERRERES, *Las Misas manuales...*, cit., pp. 24–25.

out the need of the discipline of the *CIC*/1917 to be clear (what was prescribed in the old c. 824 § 2). The answer received by this Father is recorded in the *Relatio*: the discipline has changed. In the new canon this possibility is not prohibited; therefore, it is permitted.[5] This vision, put up against the meaning of the disciplinary norm, has again become manifest in doctrinal positions after the *CIC* was promulgated. López-Illana contends that in the new *CIC* the old prohibition is still in effect.[6] Navarrete, on the other hand, alleges that the present discipline admits that possibility: having celebrated a *pro populo* Mass, if the priest celebrates another Mass, he can keep the stipend received for it.[7]

Let us study the situation. In general terms it must be stressed that the priest has the prerogative to apply the Mass he celebrates for any licit intention (cf. c. 901). However, the generic freedom he enjoys regarding the application of the Mass he celebrates is restricted in some offices for specific days. Thus, "the diocesan Bishop must apply the Mass for the people entrusted to him on each Sunday and on each holy day of obligation in his region" (cf. c. 388 § 1). A similar obligation corresponds to the parish priest towards the people entrusted to him (cf. 534 § 1). In these cases the Mass is applied *ex titulo iustitiae*, in the terms used in *CIC*/1917 (cf. c. 824 § 2).

On the other hand, the priest whose intention to celebrate the Mass has been determined by the donor with the stipend, is also applying the Mass *by a title of justice*. According to a traditional view[8] both types of assumptions were comparable because in either case the priest celebrating another Mass could not *receive* a stipend for the second Mass (today one would say that even if he could receive it *he could not claim it as his own*). It was understood that the reason for the prohibition, in relation with the Mass applied *pro populo*, was that the celebrant already *stipem fecit suam*,[9] since it was felt that the *pro populo* Mass had its own *stips* allegedly incorporated into the general payments corresponding to the celebrant, all of this within the framework of the benefice system.[10] Therefore, according to the traditional argument, if the priest celebrated more than one Mass a day, whether he had applied the Mass *pro populo* or had celebrated it for the specific intention of a faithful, once he had received the stipend he could not receive an additional stipend for the other Mass, inasmuch as he had already received the only stipend that a priest could have received on a daily basis.

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5. Cf. *Comm.* 15 (1983), pp. 200–201.
6. F. LÓPEZ-ILLANA, "L'offerta delle Messe binate," in *Palestra del Clero* 67 (1988), pp. 106–114.
7. U. NAVARRETE, "Missa pro populo et stips alterius missae eadem die celebratae (can. 951 § 1)," in *Periodica* 77 (1988), pp. 175–178.
8. Cf. LÓPEZ-ILLANA, "L'offerta...," cit., *passim*.
9. Cf. *ibid.*, p. 108.
10. Cf. NAVARRETE, "Missa pro populo...," cit., p. 176.

Beginning with this traditional view, and relating it to the present *CIC* regulation, it appears that López-Illana maintains, among other things, that: *a*) canon 951 § 1 established nothing regarding the *pro populo* Mass; and *b*) it must be taken into account that the supreme legislator knew well the existence of the *immemorial custom* about the priest who applied "pro populo suam non faciebat stipem pro alia Missa" celebrated on the same day. However, even though he knew well the existence of this *consuetudo immemorabilis*, the legislator does not give any signs of rejecting its validity, whereby—this author concludes—the effectiveness of this customary *norm* must continue to be respected.[11]

Therefore, according to this, for López-Illana the specific hypothesis we examined is not regulated by the *CIC* (c. 951 § 1) but by an immemorial custom that the legislator has chosen to maintain in effect.

Nonetheless, this doctrinal position does not seem to be acceptable.

a) The immemorial custom in question, though not specifically revoked, becomes nonetheless invalid to the extent that it may contradict the new discipline (cf. cc. 5 § 1 in relation to 951 § 1), and it may be argued that we are simply facing a change of discipline.

b) It is not a question of interpreting the present law at the cost of the former law, to the extent that the latter may have been revoked. That is to say, it is only legal to resort to the old law to the extent that it *is reproduced in the existing one* (cf. c. 6 § 2), but not in the case where the present law has revoked it.

c) According to *the CIC's notion of what the* "stips" offered for the celebration of the Mass *is* (cf. cc. 945ff), whoever celebrates the Mass *pro populo* neither receives nor can he receive any stipend for the application of that Mass. The grave obligation of the bishop and the parish priest to celebrate the Mass *pro populo* is, of course, evident. This is clear. Thus, those who perform the mentioned offices in that Mass do not receive nor can they receive a stipend, because the intention of that Mass is already reserved *a iure*, and therefore, it is not possible to satisfy the wishes of the possible donor about applying the Mass for his intention.

d) If our starting point is that the priest who celebrates *pro populo* has not received and cannot receive a stipend for that Mass, nothing seems to prevent that priest from celebrating another Mass on the same day—being already free to celebrate another Mass for the intentions of the faithful—receiving a stipend on the occasion of that Mass, and keeping it as his own. This seems to be a solution that is in harmony with the existing relationship between the mandatory principles about the application of the *pro populo* Mass (cf. cc. 388 and 534) and the discipline contained in c. 951 § 1.

11. Cf. LÓPEZ-ILLANA, "L'offerta...," cit., p. 111.

In the origins of this doctrinal debate there seems to be a lack of precision as to the concept of *stips* being utilized. López-Illana understands that the celebrant of a *pro populo* Mass already receives a *stips*,[12] but the use of this term does not concur with the notion of *stips* present in cc. 945ff. This author seems to understand this notion as included in the economic compensation that the celebrant (diocesan bishop or parish priest) obtains as an additional benefit for the ministerial performance of his duty, understood as a sort of onerous contract,[13] or as a quasi-contract.[14]

On the other hand, the PCCIRC secretariat's reply[15] does not seem to consider *stips* as the compensation obtained by the celebrant when he celebrates the *pro populo* Mass, but rather considers that this amount is of another nature. Therefore, as a consequence, if the celebrant binates, receiving thereby the *stips*, he can claim said offering as his own (cf. 951 § 1).

Navarrete's position[16] coincides with the secretariat's and the consultant's reply in contrast to what López-Illana maintains. Navarrete notes that c. 824 § 2 *CIC*/1917 originated in the benefice system, whereas the *CIC*, on the contrary, anticipates its annulment (cf. c. 1272, and what is established in *PO* 20). This author explains the reasons for the opposite position that he no longer considers acceptable: " ... ex quadam inertia nixa in doctrina et in iure praecedenti, animadvertitur adhuc tendentia ad considerandam Missam pro populo uti Missam quae habet stipem propriam inclusam in retributionibus generalibus quae parocho obveniunt."[17]

Thus, in one case, the obligation to apply the Mass for a specific intention—*pro populo*—arises from the *demands of the office held by the priest himself* In the other case, the obligation springs from the requirements of *free acceptance* by the priest himself to celebrate a Mass for the intention of a faithful from whom he has received a *stips* for that purpose. It has to do, therefore, with obligations having different origins: they are not *two homogeneous obligations*; each has a different nature.

In conclusion, that some specific Masses have to be celebrated *pro populo* is part of the obligation of some specific offices: on Sundays and holy days of obligation the diocesan bishop and the parish priest not only must celebrate the Mass, but they have to apply the intention *pro populo*. This *obligatory* intention does not proceed from the acceptance of a *stips* previously offered and accepted by the celebrant, but of the ministerial obligation of the office holder, as established by universal law. The

12. Cf. ibid., e.g., pp. 108 and 111.
13. Cf. ibid., p. 108.
14. Cf. ibid., p. 111.
15. Cf. *Comm.* 15 (1983), pp. 200–201.
16. Cf. NAVARETTE, "Missa pro populo...," cit.
17. Cf. NAVARRETE, "Missa pro populo...," cit., p. 176.

exercise of that office is rewarded in general terms and, in any case, not by the specific stipend. Starting from that position, if the same priest who has celebrated a *pro populo* Mass celebrates a second Mass on that day, he may apply it for the intention for which he has received a *stips*, and claim such a *stips* as his own. Should he licitly celebrate another Mass (cf. 905 § 2) he could no longer claim as his own the corresponding *stips*, but would have to apply it to the objectives established by the ordinary.

5. The priest "keeps for himself only the stipend for one Mass, and *assigns the rest to the objectives established by the Ordinary.*" We will now concentrate on the emphasized words, although later we will concentrate on the ordinary to whom the canon refers. If c. 946 stressed that the faithful, through the *stips* contributed to the good of the Church, by helping not only with the sustenance of its ministers but also with the support of ecclesial activities, the present canon discloses the way that such aid earmarked for the various Church activities is channeled. Garcia Barberena, commenting on the *Motu proprio Firma in Traditione* which should be kept in mind as preceding the present norm, pointed out that "the Mass donations, understood as support for the clergy and assistance to the evangelical services of the community, overflow the narrow framework of simple bilateral relation between the donor and the celebrant."[18] The assignment of a part of the Mass stipend to the different ecclesial activities was often granted by the Holy See by way of the apostolic indult, during the effective period of the *CIC*/1917. Thus, through concessions *ad casum* a stipend for any binated Mass could be received, "but with the obligation to deliver the binated Mass stipend ... for a pious cause, for example, to the Seminary."[19]

6. The priest "may retain for himself the offering for only one Mass," says the canon. Thus according to the discipline currently in effect, the priest can only claim as his own a single daily stipend. It is obvious that a single *stips* does not insure a dignified sustenance of the clergy (cf. *PO* 20). However, although this possible daily sum would be insufficient for the stated purpose, the legislator prefers to find the dignified sustenance by other means more appropriate to resolve the problem in a general way.

7. Let us now mention the ordinary as the authority who decides about the intended use of the stipends that the celebrants, according to the discipline of the canon, cannot claim as their own. The canon does not specify who is the ordinary in question (the one from the place or the one corresponding to the celebrant), which, as we will see, causes doubts

18. Cf. T. GARCÍA BARBERENA, "El Motu proprio 'Firma in Traditione' sobre estipendios de Misas," in *Revista Española de Derecho Canónico* 31 (1975), pp. 95–96.

19. L. MIGUÉLEZ, commentary on c. 824, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976).

about the interpretation. It should be considered that a good portion of the doubts were upheld, considering the differences of opinion that arose in the process of developing the *CIC*.

Regarding this point, the history of the drafting of not only the present c. 951 but that of c. 946 is to be taken into account, since it was here especially that the question of the authority who would take care of the administration and property derived from stipends would be discussed. Specifically, it was stressed at first that the diocesan bishop would be the one to manage the offers, respecting, of course, the will of the donors, and keeping in mind the needs of the Church in his diocese.[20] This assignment of the *diocesan bishop* as the appropriate authority for the allocation or distribution of the property had a precedent in the norm of the *Motu proprio* of Paul VI *Firma in Traditione*. This pontifical law granted the diocesan bishops and those equivalent in law to them the faculty of allowing for the collection of binate or trinate stipends, but on condition that the amount be allocated to underwrite the needs designated by the diocesan bishop.[21] In any case, the reference to the authority of the diocesan bishop in this area, once the *schema* was reviewed by the appropriate study group, was decided by common agreement, to be suppressed in view of the *animadversions* brought up.[22] Also, in the text of the *schema* being reviewed and in regard to what used to be the precedent of c. 951 (that is, § 2 of the then c. 11), the *local ordinary* was mentioned as the competent authority for establishing the use of the income received with stipends.[23] Mention of this was also nonexistent in the final draft. Some, though, after the promulgation of the *CIC*, were uncertain as to which ordinary was mentioned in c. 951 § 1 as the authority who decided on the uses of the property received by the celebrant through the offerings on that day. There was uncertainty that these could not be his, whether it was the local ordinary where the Mass is celebrated, or the ordinary corresponding to the celebrant himself.

This was the content of the *dubium* presented in the CPI.[24] The foundation of this doubt was not only theoretical but also of a practical nature. In fact, there was often a question about the use given to the stipends of bination or trination in the case of Masses celebrated by religious priests or members of clerical societies of apostolic life of pontifical right, as to whether they should or could deliver that stipend to their ordinary (that is, to the appropriate religious or society superior), or whether they would

20. Cf. *Comm.* 4 (1972), p. 58.

21. Cf. *AAS* 66 (1974), pp. 310–311. Cf. also T. RINCÓN-PÉREZ, "El Decreto de la Congregación para el Clero sobre acumulación de estipendios," in *Ius Canonicum* 31 (1991), p. 652.

22. Cf. *Comm.* 13 (1981), pp. 431–432.

23. Cf. ibid., p. 433.

24. Cf. *AAS* 79 (1987), p. 1132.

necessarily send it to the local ordinary.[25] Fuenmayor cautions that in this hypothetical case, giving consideration to the entire question, one would have to take into account: *a*) that the prelate of a personal prelature and the army ordinary are both ordinaries (cf. c. 295 § 1 and *SMC* II § 1); and *b*) that every clergyman who moves legitimately to another particular church but does not incardinate there (cf. c. 268 § 1) continues to have as his own ordinary the bishop of the *a qua* diocese.[26]

The official reply to the *dubium* does not accept that the ordinary must be understood here as the local ordinary. On the contrary, c. 951 § 1 refers to the *celebrant's own ordinary* "nisi de parochis et vicariis paroecialibus, pro quibus Ordinarius intelligitur Ordinarius loci."[27]

This notion conforms to the actual practice that took place by means of apostolic indults before the proclamation of the *CIc.* By virtue of these indults, some institutions—specifically religious institutes—could allocate for their own activities the binate stipends of those priests for whom they had directly assumed the burden of sustenance (not so, on the other hand, of the priests who held an office—parish priest or parochial vicar—for which they received compensation by the diocese).[28]

It has been maintained[29] that the change of the term *local ordinary* made by the *coetus* of the commission that prepared the present c. 951 § 1 was not due to a lack of attention but rather that the intent was to introduce in the new norm of universal law the normative situation then in force, were it by way of several privileges that affected not only the mere ordinaries (cf. c. 134) but the local ordinaries.

Notwithstanding the CPI reply, Fuenmayor thinks that it is foreseeable that situations may arise "in which equity may not be entirely safeguarded."[30] In any case, this author opines that the solution of the *agreements* (cf. c. 520 § 2) between the local ordinary where the priests work ministerially with their own ordinary are different from the local one and these other ordinaries. The solution of the agreements would also be applicable not only to the priests of a clerical religious institute, or of a clerical society of apostolic life, but to the priests incardinated in a personal prelature or to the clergy of the other dioceses different from the local one.[31]

25. Cf. A. DE FUENMAYOR, "Sobre el destino de los estipendios de Misas binadas o trinadas," in *Ius Canonicum* 28 (1988), p. 202.
26. Cf. ibid., pp. 202–203.
27. Cf. *AAS* 79 (1987), p. 1132.
28. Cf. A. DE FUENMAYOR, "Sobre el destino de los estipendios...," cit., p. 207.
29. Cf. F.J. URRUTIA, "Responsa Pontificiae Commissionis Codici iuris canonici authentice interpretando," in *Periodica* 77 (1988), p. 518.
30. Cf. A. DE FUENMAYOR, "Sobre el destino de los estipendios...," cit., p. 210.
31. Cf. ibid., pp. 210–211.

8. As a general rule, the priest who celebrates several times on the same day, and applies those celebrations for the intentions for which he has received the stipends, may only keep the stipend for *one while allowing for some compensation on the ground of an extrinsic title*. Thus it is expressed in the last words of c. 951 § 1. The compensation that the priest may licitly accept is not properly a part of the stipend. The reason for this contribution for the celebrant is "ob maiorem laborem aut incommodum" which the celebration may entail by reason of the circumstances or characteristics adjoining it, that is, that it may involve *extraordinary work* for the celebrant.[32] The title, or in other words, the reasons or motives for the celebration are then foreign or extrinsic to the application of the Mass being celebrated. In summarizing what is commonly understood for an extrinsic title, Manzanares points out "travel expenses, unreasonable times, sung Mass, etc."[33]

II. Paragraph two was added to the canon by the appropriate *coetus* authorized for the reviewing of the corresponding *schema*. The reason was the *animadversio* of a cardinal that seemed to be acceptable to all.[34] It must be taken into account that this norm was already in effect at that time, by virtue of no. III of the *Motu proprio* of Paul VI *Firma in Traditione* of June 13, 1974.[35]

Ordinarily there would not be just cause for *concelebrating* a second Mass on the same day (cf. 905), but if such cause existed—for example, concelebration with the bishop by reason of the pastoral visit—a stipend may not be received on occasion of this second Mass concelebrated.[36]

32. Cf. *Causa* of the SCCouncil, November 10, 1917, in *AAS* 10 (1918), p. 371.
33. Cf. J. MANZANARES, commentary on c. 951, in *Salamanca Com.* Cf. also *Causa* of the SCCouncil, May 8, 1920, in *AAS* 12 (1920), p. 539; J. FERRERES, *Las Misas manuales...*, cit., p. 24.
34. Cf. *Comm.* 13 (1981), p. 433.
35. Cf. *AAS* 66 (1974), p. 311. This norm remitted to the prior indications of the *Declaratio* of the SCDW, August 7, 1972, no. 3b, in *AAS* 64 (1972), p. 563.
36. Cf. GIRM, no. 158; cf. also A. MARZOA, commentary on c. 905, in *Pamplona Com.*

952 **§ 1. Concilii provincialis aut conventus Episcoporum provinciae est pro universa provincia per decretum definire quaenam pro celebratione et applicatione Missae sit offerenda stips, nec licet sacerdoti summam maiorem expetere; ipsi tamen fas est stipem sponte oblatam definita maiorem pro Missae applicatione accipere, et etiam minorem.**

§ 2. Ubi desit tale decretum, servetur consuetudo in dioecesi vigens.

§ 3. Sodales quoque institutorum religiosorum quorumlibet stare debent eidem decreto aut consuetudini loci, de quibus in §§ 1 et 2.

§ 1. The provincial council or the provincial Bishops' meeting is to determine by decree, for the whole of the province, what offering is to be made for the celebration and application of Mass, and it is unlawful for a priest to demand a larger sum. However, he may accept for the application of a Mass, an offering voluntarily made, which is greater, or even less, than that which has been determined.

§ 2. Where there is no such decree, the custom existing in the diocese is to be observed.

§ 3. Members of religious institutes of all kinds must abide by the decree or the local custom mentioned in §§ 1 and 2.

SOURCES: § 1: c. 831; SCCouncil Resol., 15 iun. 1918 (*AAS* 10 [1918] 504–507)
§ 2: c. 831 § 2
§ 3: c. 831 § 3

CROSS REFERENCES: § 1: cc. 1264,2°, 432 § 1, 434, 446, 19, 119,2°, 29, 945 § 2
§ 2: cc. 25, 23, 28, 26
§ 3: cc. 897, 591, 13 § 2,2°

COMMENTARY

Joaquín Calvo-Álvarez

This canon focuses on the process leading to the *establishment of the stipend* for each place in such a way that the *faithful may easily know* the amount of the offer that the Church considers appropriate whenever a priest is asked to apply a Mass for a determined intention.

The canons of *CIC*/1917 that make up the precedent are 831 and 832. For that purpose it must be cautioned that the *legal distinction* between manual Masses, as manual and founded, had disappeared.[1]

I. Paragraph 1 is central because it sets out to establish the *authority* who has the responsibility of establishing the *stips* and the effects of doing so.

1. The *schema* pointed out that it also behooved the bishop in his diocese (then, it was believed that an authority of his rank was the appropriate one for setting the amount of the stipend) to determine what the *debitum* should be by reason of extrinsic title.[2] In any case, the secretary of the commission brought up and accepted the objection raised by the *SCCong* for the purpose of omitting this point. Everyone agreed with the suppression of this second competence.[3]

2. In the course of the development work of the *CIC* there was no clear position about the competent authority to set the amount of the *stips*, in a way because there were doubts about what the territorial jurisdiction should be for the application of each *stips*.

During the sessions convened by the appropriate *coetus* of October 9–12, 1978, for purposes of reviewing the corresponding *schema*, once the contributions of consultative bodies were reviewed, the starting point was obviously the disposition of the *schema*: the competent authority for issuing the decree about the *stips* was the bishop in his diocese. It must be recalled that in the *CIC*/1917 (c. 831 § 1) that authority was attributed to the *local ordinary*. In any case, the relator held that the diocesan bishop should be the pertinent authority, rather than the local ordinary because, being a question of issuing a law, the former was the only one who could enact it, and not the vicar general. Thus, in this particular point, the jurisdiction of the bishop in his diocese was upheld.[4]

At the end of § 1 of the *schema* (corresponding to the present c. 952) it was stated that the diocesan bishop had to take as much care as possible that the matter was settled "secundum rationem ab Episcoporum Conferentia compositam." This reference was suppressed by common agreement at the behest of two consultors, and was replaced by proposal of the secretary of the commission, by the requirement of the diocesan bishop to rely on the opinion of the *bishops of the region*.[5] Obviously the intent seemed to be that by keeping the authority of the bishop in this matter, he would keep in mind the authorized criteria about territorial jurisdiction superior to the diocese. They could not bind his decision but they could guide it correctly.

1. Cf. cc. 831 §1 and 826 *CIC*/1917.
2. Cf. *Comm.* 13 (1981), p. 435.
3. Cf. ibid.
4. Cf. ibid.
5. Cf. ibid.

During the final phase of the work, the territorial venue thought more suitable for setting the *stips* for the celebration of the Mass was established. One of the Fathers of the commission proposed that the appropriate authority of this matter—the diocesan bishop—should decide, but take into account the *norms* of the Bishops' Conference and, furthermore, after hearing the presbyteral council. The secretariat and the consultants responded that the circumstances within the territory of a bishops' conference can be quite diverse and, therefore, it was not advisable that the matter should be decided by the conference. However, it is consistent with what the present c. 1264,2° establishes, that *instead of region it should be said province.*[6] Actually, regarding the c. 1215 (the present 1264), *the relatio* includes an *animadversio*: it was proposed that instead of "conventus Episcoporum provinciae" it should be said "ordinary." The answer was that it was not advisable. On the other hand, it is *appropriate that, on this subject*—the determination of the offerings made on occasion of the administration of the sacraments—some uniformity should be given, at least within the domain of the ecclesiastical province.[7] On the other hand, as regards the proposal about the bishop consulting the presbyteral council, it was answered that such consultation was left to the discretion of the bishop and it did not seem necessary to impose it.

In short, it comes down to seeking a certain type of uniformity regarding the territorial limits under which the *stips* operates: neither large enough to match the area of the bishops' conference, nor so limited that it would match that of the diocese. The area of the ecclesiastical province, with its appropriate authority, will in the end become established as the most adequate in the final text to be issued. Manzanares has stressed the evident interest of the universal legislator in seeking unity about this matter of establishing the *stips* in the ecclesiastical province.[8]

3. The authority that is empowered to set the stipend for the entire ecclesiastical province is the *provincial council* (cf. c. 432 § 1), or it may be the *provincial bishops' meeting* ("conventus Episcoporum provinciae"), which does not agree. Therefore, it must be distinguished from "conventus Episcoporum regionis ecclesiasticae" of c. 434, which to some point, during the development of the canon we are studying, was thought as an authority that would express its feelings on the matter. But it did not get to the final draft. The decisions of these authorities of the ecclesiastical province are generally made known in the private churches that form it through their own instruments of normative publicity (cf. c. 8 § 2), which are usually the appropriate diocesan Official Bulletins. For years—since 1984—Aznar Gil has been in charge of the systematic publication of the special Spanish legislation, and in his report about diocesan norms he highlights

6. Cf. *Comm.* 15 (1983), p. 201.
7. Cf. *Comm.* 16 (1984), p. 30.
8. Cf. J. MANZANARES, commentary on c. 952, in *Salamanca Com.*

the abundance of references that deal with stipends that become effective in their respective dioceses.[9]

The stated authorities of the ecclesiastical province determine the appropriate *stips* for the entire province by means of a *decree*. Whenever the decree has been issued in a provincial council it will need the *recognitio* of the Apostolic See before it can be promulgated (cf. c. 446). However, what is customary is for these decrees to be issued by the meeting of the *provincial bishops*. This *conventus* has no general or permanent authority in the ecclesiastical province (cf. c. 432 § 1), nor does it seem to have juridical personality. However, it may be expedient to apply by analogy (cf. c. 19) to those meetings what was intended for the collegial acts of the juridical persons to insure the validity of their decisions (cf. c. 119,2°) and specifically, the decree we are discussing. As for the nature of this decree it appears that it will be the *general decree* of c. 29, that is, an authentic law, inasmuch as, given the case, it may repeal contradictory customs with the force of law.[10]

As for the temporal value of the decree, it should be kept in mind that to the extent that the *stips* becomes a means—though partial—of sustenance for the clergy, it is important that the province's bishops renew, with timely regularity, the value of the *stips* once the economic circumstances of the area have been conscientiously reviewed.[11]

4. Once the *stips* is established for the entire ecclesiastical province, the faithful may know its value. Usually, when possible, they will deliver that offering to the celebrant priest whenever they request him to celebrate a Mass for a private intention. The priest, with pastoral mindfulness, will apprise the faithful promptly of the value established for the ecclesiastical province, and it is prohibited to ask for a greater amount. However, the last clause of the paragraph clarifies that the priest "may accept for the application of a Mass, an offering voluntarily made, which is greater, or even less, than that which has been determined." These final words of the paragraph come from c. 832 *CIC*/1917, although it accepted the lawfulness of the priest's behavior in the latter case—that is, accepting a smaller stipend than the established one—if the local ordinary had not prohibited it. In the *schema* that, together with the objections made by the consultation organs, the members of the *coetus de sacramentis* reviewed, the norm to which we now refer made up the contents of a canon on its own, although in it there was no reference to the possible intervention of and prohibition by the local ordinary. Both the secretary of the commission and the relator suggested adding "et nisi loci Ordinarius prohibuerit" or

9. Cf. F.R. AZNAR GIL, "Boletín de legislación particular española," in *Revista Española de Derecho Canónico*, from no. 41 (1985) on.

10. Cf. *Comm.* 13 (1981), p. 435, regarding the legal character of the decision according to the *Relator*, Mons. Onclin.

11. Cf. SCCouncil, Resol. June 15, 1918, in *AAS* 10 (1918), pp. 504–507.

"nisi aliter, ab Episcopo diocesano statutum fuerit." However, after everyone gave careful consideration to the matter, they left the language of the norm just as it was, introducing only a minor style correction.[12] Finally, the norm was incorporated as a last clause of § 1 of the cc. 952. In sum, the priest is completely free to accept a lesser stipend than the one established, thus making more evident the pastoral good sense about the treatment of the faithful in every case, and the obvious disposition that the priests must cultivate in order to serve the faithful, by avoiding everything that could make hateful the recourse entrusted to their pastors (cf. c. 945 § 2).

II. Paragraph 2 discusses the norm that would replace the provincial decree whenever it has not been issued: the custom *in dioecesis vigens.*

The paragraph's norm is substantially the same as that of § 2 c. 831 *CIC*/1917. In any case it is evident that custom *(consuetudo)* is used in the juridical sense (cf. c. 25).

If there is no decree for the entire ecclesiastical province, the applicable norm in each diocese will then be the custom, as prescribed by universal law: in the absence of the decree provided for in § 1, the "consuetudo in diocesi vigens" normatively replaces it. Therefore, for this purpose cc. 23–28 should be taken into account. Most assuredly this diocesan practice can be repealed by particular law (cf. c. 28). Nonetheless, the *competent* legislator (cf. c. 26) will not be the bishop of the diocese, but the provincial council or the meeting of the bishops of the province. That is, the diocesan bishop *motu proprio*—not acting jointly with the other bishops of the ecclesiastical province—does not have the authority to unilaterally set the amount of the stipend for his diocese. In the absence of a decree covering the entire province, it will then be necessary to abide by the prevailing custom in the diocese. Manzanares seems to favor this interpretation.[13]

III. Paragraph 3, mindful of the discipline being discussed, touches upon a subject directly connected with the pastoral attention of the Christian people, which is also sensitive and weighty, because of its close connection with the daily celebration of "the eucharsitic sacrifice, the memorial of the death and resurrection of the Lord, in which the sacrifice of the cross is for ever perpetuated" (cf. c. 897). It strives to avoid pluralistic disciplines within the framework of the jurisdiction and the life of the Church. All must abide by the norm prevailing in the provincial decree or, if it is the case, by the existing custom in the diocese, and this also applies to the members of any religious institute.

12. Cf. *Comm* 13 (1981), pp. 435–436.
13. Cf. J. MANZANARES, "Eucaristía," in J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo Derecho parroquial* (Madrid 1990), p. 250.

1. In the *schema* for the reform of *CIC*/1917, the beginning terms of § 3 of c. 831 of the old *Codex* were changed. Instead of beginning "Etiam religiosi, licet exempti" § 3 of the canon of the *schema* that preceded the present 952 began as follows: "Sodales Institutorum vitae consecrate, licet exempti ..."[14] The draft that was introduced agreed with the terminology that was finally adopted in part III of book II and was also more *comprehensive* or encompassing of the diversity of possibilities that could be considered. However, the final drafting mentions again only the *religious*. Although it does not expressly name those who could profit from an exception (cf. c. 591), the tone of the paragraph includes all of the religious without exception: "Sodales quoque institutorum religiosorum quorumlibet."

2. Considering the sensitivity of the subject, the rationale of the norm established in this paragraph could be connected to its consideration as one of *public order* (cf. c. 13 § 2,2°). If it is so, transients are subject to these special norms (the ones pointed out in § 1 and 2 of the canon we are now discussing) whenever one or the other is in effect in the diocese where the transients are found.

14. Cf. *Comm.* 13 (1981), p. 435.

953 Nemini licet tot stipes Missarum per se applicandarum accipere, quibus intra annum satisfacere non potest.

No one may accept more offerings for Masses to be celebrated by himself than he can discharge within a year.

SOURCES: c. 835

CROSS REFERENCES: cc. 955 §§ 1 et 4, 956

COMMENTARY

Joaquín Calvo-Álvarez

1. The drafting of this canon is designed to guarantee, as far as possible, and effectively, compliance with the will of the faithful. The *negative* writing of the text—*nemini licet*—expresses the unbending duty of every priest to adhere to the norm. It is the canon that, in a general way, has to do with the maximum *time* allowed to the celebrant who agreed to celebrate one Mass or Masses, for the intention of a faithful who has given him a *stips* for that purpose.

The norm seems intended to avoid the danger of accepting the onus of so many Masses to be applied *personally* that the obligation undertaken will prove excessive to the point that the Masses cannot be celebrated. The direct prohibition, which is part of the norm, requires the personal development of the virtue of order; that is, the norm requires—to make the prohibition more effective—a responsible order on the part of the celebrant, which is reinforced and summarized perceptively by c. 955 § 4 for every priest who receives orders for Masses.

2. The canon coincides substantially with c. 835 *CIC*/1917. In its development we know that much was discussed, both about the preservation of the norm of the old Code as of the exact tone of its formulation.[1] Finally, with the exception of one consultor, it was approved just as it appeared in the *schema*,[2] although, in the final version, minor grammatical changes are noted.[3]

3. Canon 834 *CIC*/1917 detailed minutely the procedure that the celebrant had to follow in regard to the celebration time of the Mass, considering what the donor had or had not specifically established. Thus it should

1. Cf. *Comm.* 13 (1981), p. 436.
2. Cf. ibid.
3. Cf., e.g., the collection in the *Relatio*, in *Comm.* 15 (1983), p. 201.

be noted that the norm did not go into the new Code. Although it had at first been *summarized* in the *schema*, because one of the consultors felt that it was unnecessary, it all ended in a discussion and it was suppressed, with two votes against and one abstention.[4] This suppression and that of § 2 of c. 841 of *CIC*/1917 help us to understand with greater precision the present meaning of the canon we are studying.

4. On the question of stipends, generally, we can say that the *CIC* regulation continues to show a clear respect for the will of the donor. However, as for the time for the celebration of the Mass—the limit of one year for the norm we are studying—it may be noted that the will of the donor has been restricted and subordinated to the clearer and more determined will of the legislator. This may be ascertained by comparing three stages in the evolution of this phase of the discipline of the stipend:

a) SCCouncil, Decree *Ut debita*, May 11, 1904, no. 3.[5] The discipline then was, on this point, practically the same as the present one, but it was added that if the will of the donor about the Masses ordered was not to limit the celebrant *intra annum, the donor's will prevailed*, and the priest was not subject to the general norm;

b) *CIC*/1917. Canon 835 (the immediate precedent of the present c.immediate precedent to 953) included the norm of no. 3 of the *Ut debita*, but without the addition we have seen; that is, the *CIC did not include the possibility that, by the donor's will, the year's limit would in fact cease to be such a limit.* Things being that way, some authors interpreted c. 835 in a very broad way (that is, in a way similar to the discipline of the Decree *Ut debita*). This broad interpretation was based on the analysis of the context (cc. 834 § 3 and 841 § 2). In this fashion, some authors maintained that although the *text* of c. 835 did not include the exception of Decree *Ut debita*, consideration of the *context* nevertheless permitted that in specific cases the will of the donor dispensed legitimately, with the literal rigor of the said canon;[6]

c) in the present *CIC* the norms of the former cc. 834 § 3 and 841 § 2 have not been included. They just happened to be the norms that supported the broad interpretation of the old c. 835, as we have just seen. Thus, it may be concluded that as regards this point *the rigorous will of the legislator has won over the possibly opposite will of the donor.* That is, presently, even if the donor permits, it does not seem that the priest may licitly accept so many stipends for personally celebrating Masses that he could not celebrate *in the term of one year.* The legislator concluded

4. Cf. *Comm.* 13 (1981), p. 436.

5. *ASS* 36, pp. 672–676; cf. also the text of said Decree in J.B. FERRERES, *Las Misas manuales según la disciplina vigente* (Madrid 1924), Appendix II, pp. 305–310.

6. Cf. e.g., J. CREUSEN, "De oneribus missarum suscipiens," in *Jus Pontificium* 5 (1925), pp. 100–103. For a proponent of the strict interpretation of c. 835 *CIC*/1917, cf. J.B. FERRERES, *Las misas manuales...*, cit., pp. 111–113.

by adopting the most stringent legislation *for the purpose of insuring that the will of the donor,* accepted by the celebrant upon receiving the stipend, *be actually respected.* In the final analysis, the will of the donor is invariably the root from which the obligation of the celebrant arises. However, as is natural, the will of the donor is not always all-inclusive: it is also limited by the requirements that the legal norm imposes on the celebrant, who cannot accept so many stipends for Masses that he could not *personally* celebrate *intra annum.*

Manzanares, who holds the opposite opinion, may now be considered to be included among the holders of what we have called *broad interpretation* during the effective period of the *CIC*/1917.[7] However, in view of the mentioned change of the normative data (the *context* of the present c. 953) we feel that the stringent interpretation is on a sounder basis.

5. In any case, if in fact a year after the acceptance of the stipends for the celebration of Masses for specific intentions, such Masses have not actually been celebrated, the charges for the Masses must be given to the respective ordinaries (cf. c. 956).

6. Finally, the open course available to the priest who cannot accept additional *oblations* in order not to violate the prohibition of c. 953, art. 5.1, of the Decree *Mos iugiter* of 1991 is very explicit: "Priests who receive a large number of donations for private intentions of Holy Masses, for example, on occasion of the Commemoration of the deceased faithful or in other circumstances, and who cannot personally comply with them during the year (cf. c. 953) instead of refusing them, thereby frustrating the pious will of the donor, and deterring them from their good intentions, must pass them on to other priests (cf. c. 955) or to his own ordinary (cf. c. 956)."[8]

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7. Cf. J. MANZANARES-A. MOSTAZA-J.L. SANTOS, *Nuevo Derecho Parroquial* (Madrid 1990), p. 251.

8. Cf. *AAS* (1991), p. 446. This is a Decr. of the CC, published on May 6, 1991, in which some rules are laid out regarding the stipends which priests ought to receive for the Masses that they celebrate. Cf. this same document, with a different date, February 22, 1991, in *L'Osservatore Romano* no. 13, March 29, 1991, p. 5 (161) (English edition: March 25, 1991, p. 2).

954 **Si certis in ecclesiis aut oratoriis Missae petuntur celebrandae numero plures quam ut ibidem celebrari possint, earundem celebratio alibi fieri licet, nisi contrariam voluntatem oblatores expresse manifestaverint.**

If in certain churches or oratories more Masses are requested than can be celebrated there, these may be celebrated elsewhere, unless the donors have expressly stipulated otherwise.

SOURCES: c. 836

CROSS REFERENCES: cc. 953, 1223, 956

COMMENTARY

Joaquín Calvo-Álvarez

Whereas the previous canon discussed the maximum period of *time* for satisfying the stipends for Masses to be celebrated personally, this canon discusses the *place* where, in specific cases, the Masses requested must or may be celebrated.

1. According to the *stips* discipline, the question of the *place where* the acceptor of the *stips* must celebrate the Mass is seen by the legislator as of less concern than the time of the pledged celebration. What is decisive is to make sure *that the Mass is celebrated* for the intention of the faithful. To be sure, the intent of c. 953—the time limit of one year granted for legally satisfying the stipends accepted for the personal celebration of the Masses—is no other than *insuring* the effective celebration of those Masses. The limit of one year seeks to guarantee *effective* compliance with the obligation incurred with the faithful. On the other hand, always with the respect due to the intention of every faithful, the place for the celebration is considered of secondary importance.

2. Canon 836 of the *CIC*/1917 stands as the precedent for the norm we are studying. In the new *CIC* some changes have been introduced. Specifically, the scope of the norm now encompasses the oratories, not just the churches.[1] Furthermore, neither of the two have to be "peculiari Christifidelum devotione ornatis," as was stated in the *schema*.[2] What the norm foresees is simply the fact of an excess of *requests* for entrusted Masses

1. Cf. *Comm.* 13 (1981), p. 436.
2. Cf. ibid.

surpassing what could be celebrated there, irrespective of the peculiarities of the place of worship or the reasons for their occurrence.

3. The canon emphasizes the *determined respect for the will of the faithful* who offer their *stips* for the celebration of Masses for their respective private intentions, together with the necessity to *facilitate as much as possible the celebrants in compliance with the pastoral obligations agreed upon* even if it were not possible for all of the Masses to be celebrated in the same church or oratory where the request was received.

a) The starting point is *the respect for the presumed will of the donor.* Commonly, the donor will not determine expressly the place of the celebration and, specifically, it will not be normal for the donor of the *stips* to state expressly that he or she wants the Mass or Masses to be celebrated in the very church or oratory where the request was placed. In any case, the norm *assumes* that this is the donor's will. Therefore, in principle, whenever possible, the Mass or Masses should be celebrated in the same place.

b) However, c. 954 *grants greater freedom to him who has received the request,* in comparison with the dispositions of c. 836 in *CIC*/1917. At the time, the norm determined that in the churches where the influx of donations for the Masses was so great that they could not all be celebrated there during the time allowed, the faithful should be informed by means of a board placed in an obvious and distinct place, that such Masses would be celebrated either right there, in that very church, if feasible, or in another place. Now, the publicity intrinsic to the board is substituted by the publicity of the norm itself. Therefore, presently, there is no need to set such a *tabella,* which was an earlier and generic form of public communication open to the view of the faithful, since the law itself makes public the proper way to act with sufficient clarity and with a general character.

c) In any case, the canon now in force sets forth a *particular respect for the expressed intention of the donor,* because if he should happen to oppose having the Mass or Masses celebrated in a church or oratory different from the one he initially requested, then the Mass or Masses must be celebrated in the place requested. Obviously, we always start with the prior acceptance of the explicit will of the donor by the celebrant, the church rector, or the appropriate superior (cf. c. 1223), as the case may be.

d) As for the requests for Masses that actually may not get to be celebrated in the church or oratory where they were received—and if there is evidence of the expressed will of the donor about the Masses being celebrated *only* in that church or oratory—it appears that they must be communicated annually to the respective ordinary, by sending him the appropriate offerings received (cf. c. 956).

955 **§ 1. Qui celebrationem Missarum applicandarum aliis committere intendat, earum celebrationem quam primum sacerdotibus sibi acceptis committat, dummodo ipsi constet eos esse omni exceptione maiores; integram stipem receptam transmittere debet, nisi certo constet excessum supra summam in dioecesi debitam datum esse intuitu personae; obligatione etiam tenetur Missarum celebrationem curandi, donec tum susceptae obligationis tum receptae stipis testimonium acceperit.**

§ 2. Tempus intra quod Missae celebrandae sunt, initium habet a die quo sacerdos easdem celebraturus recepit, nisi aliud constet.

§ 3. Qui aliis Missas celebrandas committunt, sine mora in librum referant tum Missas quas acceperunt, tum eas, quas aliis tradiderunt, notatis etiam earundem stipibus.

§ 4. Quilibet sacerdos accurate notare debet Missas quas celebrandas acceperit, quibusque satisfecerit.

§ 1. One who intends to transfer to others the celebration of Masses to be applied, is to transfer them as soon as possible to priests of his own choice, provided he is certain that they are of proven integrity. He must transfer the entire offering received, unless it is quite certain that an amount in excess of the diocesan offering was given as a personal gift. Moreover, it is his obligation to see to the celebration of the Masses until such time as he has received evidence that the obligation has been undertaken and the offering received.

§ 2. Unless it is established otherwise, the time within which Masses are to be celebrated begins from the day the priest who is to celebrate them receives them.

§ 3. Those who transfer to others Masses to be celebrated are without delay to record in a book both the Masses which they have accepted and those which they have passed on, noting also the offering for these Masses.

§ 4. Each priest must accurately record the Masses which he has accepted to celebrate and those which he has in fact celebrated.

SOURCES: § 1: cc. 837–840; SCCouncil Causa, 19 feb. 1921 (*AAS* 13 [1921] 228–230); SCCouncil Causa, 16 apr. 1921 (*AAS* 13 [1921] 532–534)
§ 2: c. 837
§ 3: c. 844 § 1
§ 4: c. 844 § 2

CROSS REFERENCES: § 1: cc. 950, 1264, 952 §§ 1 et 2, 957
§ 3: cc. 953, 956, 957, 958

COMMENTARY

Joaquín Calvo-Álvarez

This canon focuses on the regulation for the *distribution* of the request for Masses to be applied. Thus, it deals primarily with those whose mission is one of *mediation* between the faithful who wish to have Masses celebrated for their own private intentions, and the priests who will finally celebrate those Masses for those intentions. The meaning of § 2 is explicable in this context, and, therefore, its inclusion in the canon seems to be justified; thus, it is a question of the priest *who has been invested as a mediator.* This is obvious from reading the second clause of c. 837 *CIC*/1917, which constitutes the immediate normative precedent. On the other hand, the norm of § 4 refers to *every priest* who received requests for Masses, whether directly from the faithful, or indirectly, through a mediator. The inclusion of this norm in c. 955, forming that which is contained in the last paragraph, may be justified by the fact that the subject coincides, as regards subject matter—notations about orders for Masses—with § 3 of the same canon.

I. Paragraph 1 deals with the *conditions for transmitting the requests for celebration of the Masses* to be applied. The norm establishes when, to whom and how the request must be made, in addition to the requirement for relieving the mediator of the responsibility of having the Masses celebrated for the corresponding intentions. The immediate precedents of the norms contained in this first paragraph are found in cc. 837–840.

1. "One who intends to transfer to others the celebration of Masses to be applied, is to transfer them *as soon as possible ...*" sets down, as a beginning, the first sentence of this paragraph. The phrase *quam primum* is taken from c. 837 *CIC*/1917. The demand fell, according to the norm of *CIC*/1917, upon whoever had Masses that *had to be celebrated by others.* However, in the present *CIC*, the demand mentioned weighs on anybody who seeks to or wishes to entrust to others the celebration of Masses to be applied. That is, for example, as soon as a priest decides not to celebrate Masses entrusted to him personally, he must seek *quam primum* the appropriate celebrant or celebrants. Thus, the currently valid norm contains features of c. 837 as well as of c. 838, both of the *CIC*/1917.[1]

1. Cf. *Comm.* 13 (1981), pp. 436–437.

2. The transfer of the requests for Masses to be celebrated for private intentions must be done as soon as possible, to priests chosen by the transferer "providing that he can attest that they are trustworthy." *CIC*/1917 (c. 838) stressed that the transferring priest ought to have *absolute certainty* (*probe sibi constet*) of the righteousness of the priests to whom he had intended to entrust the request, and in order to ensure their complete certainty, he envisioned the possibility that they be recommended by testimony of their own ordinary (not by the ordinary of the one transmitting them, but by the one corresponding to the priests to whom he wished to entrust the request).

The reason for specifically considering the possibility of recommendation from the ordinary was to avoid inconsiderate and abusive transfers. This approach for ascertaining with absolute certainty the integrity of those who would celebrate the Mass had already been introduced by a decree of the SCCouncil of May 21, 1907.[2] In the *CIC* now in force this allusion to the recommendation of the ordinary was not included.[3] The only thing mentioned in the norm is the *evidence* by the transmitter—and the canon does not indicate the intensity of the possible means employed to acquire it—that the selected priests are suitable to receive the assignment we are discussing.

3. "He must transfer the entire offering received, unless it is quite certain that an amount in excess of the diocesan offering was given as a personal gift." This is the official translation of the second part of the canon we are commenting on. This norm is substantially derived from c. 840 § 1 *CIC*/1917. The essence of this norm is the *general principle*—the duty to deliver the *stips*, in all its integrity—and the accepted *exception* to the general effectiveness of the indicated principle.[4] Therefore, unless the anticipated exception occurs, nothing can be retained by the transferer.[5]

The only reason that he who wishes to entrust the celebration of Masses to others would have for not being obligated to deliver *integram stipem receptam* is "the proven certainty [*certo constet*] that anything over what is established by the diocese was given to him as a personal compensation." According to the language of the second clause of § 1 of the canon, it is not enough for the transmitter of the request *to be informed* of the point that the law wants to assure, for example, the *ipsi constet* of the canon's first clause. But for the transmitter this evidence should be especially certain: it is necessary that he *be informed with certitude*. Here there is neither room for, nor would it be sufficient to have, a

2. Cf. *Causa* of the SCCouncil, February 19, 1921, in *AAS* 13 (1921), pp. 228–230, and, specifically, p. 229.
3. Cf. *Comm.* 13 (1981), p. 437.
4. Cf. *Comm.* 13 (1981), p. 437.
5. Cf. *Causa* of the SCCouncil, April 16, 1921, in *AAS* 13 (1921), p. 533.

sort of *legitimate presumption* about the intention of the faithful offerer (cf. c. 950). *Certainty* of that intention is necessary, and it has to be the type of certainty that will not and cannot give rise to reasonable doubt. It has to have a determined soundness, that is, it is held *with certitude*. The principal legal requirement of c. 955 § 1, with respect to c. 950, springs from the increased necessity for juridical guarantee of the supposition contained in the first canon regarding the supposition of the second. The injustice, were it to occur, would be greater on the part of him who *without celebrating the Mass*—entrusted it to somebody else—keeps for himself the excess over the established stipend, than on the part of him who, withholding a sum illegally, *still celebrates the Masses* for the intention of whoever offered the stipends.

During the final phase of development of the *CIC* a specific *animadversio* was directed to the canon then containing this norm. One of the Fathers proposed a possible alternative—intending to have it included in the legal version—to the possibility that the donor may want to leave a designated amount to whoever took charge of his petition, *intuitu personae*. He specifically proposed that the second clause of § 1 ended the text as follows: " ... datum esse intuitu personae, vel ad finem ab Episcopo dioecesano selecto." The reply given to this Father was that it was not suitable. It was argued that no tax could be imposed on the donations for the Masses.[6] Although it was not actually a tax since the oblation of the faithful is, in every case, voluntary, the intent has been to safeguard, ever so minutely, against all possible confusion on the subject. The change in terminology (see commentary on c. 945) about absolutely avoiding the term *stipend* and to substitute *stips* for it, expresses the same principle which indicates regulation of the entire subject. The same concern, even for the terminology, also appears in the language of c. 1264: the provincial bishops' meeting will also determine the taxes to be paid for acts of executive authority (cf. c. 1264 § 1). However, the referred *conventus Episcoporum* will also determine the appropriate *offerings* (*oblationes*), not the taxes, on occasion of the administration of the sacraments and sacramentals (cf. c. 1264,2°). It is clear that c. 1264,2° does not refer directly to specific offerings made by the faithful for the application of the Mass to a determined intention, but the similarity between both types of *oblationes* is also evident.

The official Spanish translation of the *CIC* in Spain, renders "excessum supra summam in diocesi debitam" as "amount in excess of the diocesan offering." It is clear that an implicit reference is being made here to c. 952. It should be taken into account that the amount of the *stips* extant in the diocese is not *established in the diocese* by the corresponding diocesan authority but is usually *established for the diocese* by the supradiocesan authority designated in § 1 of c. 952.

6. Cf. *Comm.* 15 (1983), p. 201.

In sum, we can say that whoever wishes to entrust to others the celebration of Masses to be applied must do it *quam primum* to priests of integrity, also delivering to them *integram stipem receptam.*

4. In the last clause of the paragraph it is pointed out that the transferer of the offerings remains obligated to seek to have the Masses celebrated, up until he has evidence, both of the acceptance of the obligation and of the receipt of the stipend. In the first place, it is obvious that for a priest to acquire the obligation to celebrate a Mass for a determined intention, his *previous acceptance* is necessary. However, by law, this obligation is not considered accepted—it has no effect whatsoever—if the accepting priest has not received the *corresponding stips* (cf. 948). Whoever transferred the request must have evidence both of the acceptance of the obligation and of the actual receipt of the stipend. In the interim, before he receives such evidence, the obligation to see that the Masses are celebrated continues to be his responsibility.

The Decree *Ut debita* of November 5, 1904,[7] determined that the *obligation* on the part of someone who has distributed the offerings for Masses which were really to be celebrated, *remained until he received notice that they had effectively been celebrated* (cf. no. 6). Although this norm intended to guarantee full compliance with the commitment made, it nonetheless imposed a difficult control upon the priests who had committed themselves to celebrate these Masses, a control that could easily become detestable. Therefore, the *CIC*/1917 dropped this normative exigency. Canon 839 substantially included the rule now in effect: that is, once the priest has accepted the obligation and received the stipend or *stips*, he who transferred the order is liberated from the obligation which is no longer his own, since it has been transferred to the celebrant who agreed to assume it. This has to be understood as not excluding the responsibilities of general vigilance on the part of the ecclesiastic authorities (cf. c. 957).

5. The norm of this third and last clause of § 1—substantially identical to the discipline of c. 839 *CIC*/1917 was almost excluded from the new *CIc.* The appropriate commission secretary proposed its suppression, because for him "res clara est in suis principiis." However, a consultor expressed his disagreement about the suppression "quia regulae dantur et inserviunt praecise iis qui capaces non sunt eas ex principiis deducere." Once the vote was taken, the text was carried by four votes against three.[8] It can be seen that there are two tendencies in the Commission for the Revision of the Code: one that tried to limit itself as far as possible to *determining the principles* that the subject adheres to, and another that did not consider the former position as sufficiently useful for what was destined for canon law. Moreover, it would have to *detail* at least *some of the*

7. *AAS* 36, pp. 672ff.
8. Cf. *Comm.* 13 (1981), p. 437.

consequences of the established normative principles. This tension of positions reappeared, for example, during the last phase of development of the new Code. Among the general objections to the language used in the *schema* about the stipends, one of the Fathers insisted on avoiding a casuistic tone, and asked to try to reduce the normative even more, leaving the moral and juridical principles clear. However, the secretariat and the consultors replied that the norms had already been reduced as much as possible and the remaining norms seemed necessary.[9] In fact cc. 825, 826, and 844 § 1 *CIC*/1917 contained norms that were no longer included in the *CIC* then in effect. It is possible that c. 825 *CIC*/1917, which contained four supposedly illicit possibilities on the question of stipends, could be shown as an example of the casuistry that the new *CIC* tried to avoid. In fact, the subject has always facilitated casuistry.[10]

II. Paragraph 2 is intended to determine *the beginning of the time* period for the celebration of the Masses entrusted for the corresponding intentions. It has to do with the time period, or *tempus legitimum* (c. 937 *CIC*/1917), available to the celebrant to comply with his commitment. The forerunner of this norm is in the second clause of c. 837 *CIC*/1917. In the pertinent *schema* during the period of development of the Code, the norm remained practically identical to the *CIC*/1917, but as we have already ascertained, the first part of the canon in the *schema* actually became the present first clause of c. 955. This refers to the *urgency* of transmitting the obligation to celebrate Masses. The second part of the canon finally integrated itself into the same canon, becoming its § 2.

The beginning of the time period for celebrating the Masses is the day on which the priests "received the obligation." As we have already seen, it does not seem that the priest can be considered as having received the obligation if the acceptance is not made simultaneously with the receipt of the stipend (cf. § 1, *in fine*). Finally, the general caution of the canon on the point we are discussing is a sensible cautiousness in view of the enormous variety of circumstances and peculiarities of life, as oftentimes throughout the *CIC*, the normative cautiousness concludes by giving an opening to other possible demands that could impinge upon the subject "... nisi aliud constet."

III. The contents of § 3 has c. 844 § 1 *CIC*/1917 as a precedent. In that precept certain specific warnings were established in regard to the order and diligence that the local ordinaries and the religious superiors should observe in entrusting their subjects and others with the celebration of the Masses. Thus *it seems that this precept reappears in the CIC, but with a general character*; that is, it addresses all those—whether or not they are ecclesiastical authorities—"qui aliis Missas celebrandas committunt."

9. Cf. *Comm.* 15 (1983), p. 199.

10. Cf. e.g., E.F. REGATILLO, "Responsabilidad de las misas de estipendio," in *Sal Terrae* 1965, pp. 509–511.

With this general character, whoever entrusts to others Masses to be celebrated for specific intentions does not have the legally determined responsibility for having the entrusted Masses *quamprimum celebrentur* (cf. c. 844 §1 *CIC*/1917. Now, the *quam primum* is present in the Code in order to stress the urgency of the transfer of the obligation to celebrate the Masses (cf. c. 955 § 1), but not to insure that they will be celebrated as soon as possible. This urgency, to an adequate extent, immediately falls (cf. cc. 955 § 2 and 953) upon whoever accepted the obligation to celebrate those Masses, and, it would be advisable to keep it in mind (even if the urgency is not explicitly indicated) by the appropriate ordinaries (c. cf. 956 and 957).

The paragraph expressly determines that those who transfer to others Masses that are to be celebrated must make the appropriate notations *in a book.* The volume of Masses entrusted and, therefore, the specific responsibility of transferring to others Masses that have to be celebrated, seem to be the basis for the determined demand to make notations, not just *accurate,* as in § 4, but also in a book. In this manner, in some circumstances, exact and up-to-date knowledge—the notation required *sine mora*—of the situation both of the requests for Masses received and of those made to others, together with exact knowledge of the value of the offerings initially made by the faithful, will be made. A special book is also required in c. 958 (see commentary).

IV. The last paragraph specifically established *the duty incumbent upon every priest who received requests for Masses.* "Quilibet sacerdos" is a clear expression that encompasses everyone who habitually or occasionally receives requests for Masses. The precedent in the *CIC*/1917 is c. 844 § 2.

In this case it is not required to keep a book; but rather, without major normative precisions, simply *notare debet* the requests for Masses received and those already fulfilled. This notation must be made *accurately* and carefully. This requirement for order and clarity demanded from every priest in regards to this matter is undoubtedly intended to insure effective compliance with the pious wills of the faithful who entrusted their desire to have Masses celebrated for their intention to the corresponding *oblatio* or *stips.*[11]

11. Cf. A. MARZOA, commentary on cc. 957–958, in *Pamplona Com.*

956 **Omnes et singuli administratores causarum piarum aut quoquo modo obligati ad Missarum celebrationem curandam, sive clerici sive laici, onera Missarum quibus intra annum non fuerit satisfactum suis Ordinariis tradant, secundum modum ab his definiendum.**

Each and every administrator of pious causes or those in any way obliged to provide for the celebration of Mass, be they clerics or lay persons, are to hand over to their Ordinaries, in a manner to be determined by the latter, such Mass obligations as have not been discharged within a year.

SOURCES: c. 841 § 1

CROSS REFERENCES: cc. 1299ff, 955 §§ 1 and 3, 953, 134, 1301 § 1, 6 § 2, 202 § 1, 19

COMMENTARY

Joaquín Calvo-Álvarez

1. Those whose responsibility it is to see that the Masses are celebrated should deliver periodically to their respective ordinary the obligations for Masses not celebrated *intra annum*. This is not just a simple *communication* about the obligation of pending Masses, but the periodic *delivery* of these obligations. Therefore, those who are obligated will clearly report the pending Masses and intentions, and deliver the applicable stipends.[1] The norm which is the precedent in the *CIC*/1917 is c. 841 § 1, and § 2 of the same canon made clear the time period for the Masses to be delivered depending on whether they were *manual* Masses or *in the manner of manual Masses* (cf. c. 826 *CIC*/1917). As we know, that legal distinction has disappeared, something that rendered meaningless the possible inclusion of the norm of that § 2 in the *CIc*. The norm of the existing c. 956 is substantially equal to the one contained in c. 841 § 1 *CIC*/1917. In any case, the language presently used seems to be more precise. The canon does not address those who are *obligated to carry out* the requests for Masses ("ad Misarum onera implenda obligati") but rather those who are obligated *to see that said obligations are carried out* ("Obligati ad celebrationem curandam"). On the other hand, the preceding norm indicated the time when the obligations of Masses should be delivered to the respective

1. Cf. JUAN B. FERRERES, *Las Misas manuales según la disciplina vigente* (Madrid 1924), p. 147.

ordinary: toward the end of each year ("sub exitum cuiuslibet anni"). The expression was not devoid of a certain ambiguity, but was resolved with the clarification of § 2. Now, on the other hand, the specific moment for the delivery of the accumulated Masses uncelebrated *intra annum* remains at the discretion of the ordinary of the obligated parties, although it seems clear that the delivery of uncelebrated Masses still pending ought to have an annual periodicity.

2. As for those obligated to the annual delivery of uncelebrated Masses, the canon refers, first of all, to "each and every one of the administrators of pious causes" (cf. c. 1299ff), if they find themselves in that situation. The obligation extends to "whoever in any way is obligated to make sure that Masses are celebrated, be they clergy or lay person." Among those obligated will be, for example, the member of a private association who, according to its statutes, would be responsible in that organization for everything having to do with the administration of pious causes, providing that these included the obligations for Masses. Obviously, the obligated include those who are generically designated in c. 955 § 3. Also obligated are the priests who for whatever reason have not celebrated *intra annum* the Masses that they agreed to celebrate personally (cf. c. 953)[2] without having transferred such obligation to other priests during that time period (cf. c. 955).

3. The canon states that those who are committed to deliver the obligation of still uncelebrated Masses during the year, will do it *suis ordinariis*. Many times it will be the local ordinary, but not in other times (cf. c. 134). Precisely, it is the ordinary—and not only the local ordinary—who is "the executor of all pious dispositions" (cf. 1301 § 1).

4. The obligations for Masses that have to be delivered to the respective ordinaries are those unfulfilled *within the year*. Manzanares, in considering c. 6 § 2 and keeping in mind the tradition of *CIC*/1917 (cf. c. 841 § 2 and 826), interprets the establishment of the beginning of the year when the Masses requested should have been celebrated. He says: "The year is reckoned in conformity with c. 202 § 1. If it were a question of foundations the year would be counted from January 1 to December 31."[3] According to this seemingly clear criterion, *intra annum* means within the 365 days following the day in which the obligation to celebrate (c. 953) was contracted, or the appropriate Masses were celebrated, by receiving the stipend; in the case of pious causes *intra annum* is from January 1 to December 31.

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2. Cf. CC, Decr. *Mos iugiter*, May 6, 1991 (date of publication; that of the document February 22, 1991), in which some rules are laid out regarding stipends, which priests ought to receive for the Masses that they celebrate, in *AAS* 5 (1991), pp. 443ff., art. 5,1; this same Decree in *L'Osservatore Romano*, no. 13, March 22, 1991, p. 5 (161) (English edition: March 25, 1991, pp. 2 and 10).

3. J. MANZANARES, commentary on c. 956, in *Salamanca Com.* Cf. also, with respect to pious causes, A. MARZOA, commentary on c. 956, in *Pamplona Com.*

5. In any case, the ordinaries are obligated to determine the *procedure* that those affected by the canon must respect in order to comply with their obligation to deliver periodically the pending Masses not celebrated *intra annum*. Until the appropriate ordinaries do determine such a *procedure*, local *custom* must, in each instance, be followed (cf. c. 19).

957 **Officium et ius advigilandi ut Missarum onera adimpleantur, in ecclesiis cleri saecularis pertinet ad loci Ordinarium, in ecclesiis institutorum religiosorum aut societatum vitae apostolicae ad eorum Superiores.**

The duty and the right to see that Mass obligations are fulfilled belongs, in the case of the churches of the secular clergy, to the local Ordinary; in the case of churches of religious institutes or societies of apostolic life, to their Superiors.

SOURCES: c. 842

CROSS REFERENCES: cc. 956, 1308, 266 § 3

COMMENTARY

Joaquín Calvo-Álvarez

1. This canon concerns itself with specifying who the authorities are whose duty it is to see that the obligations for Masses are fulfilled. While the foregoing canon (c. 956) had to do with those who are obligated (*quoquo modo obligati*) to see that the Masses are celebrated and are performed in an orderly fashion, the present canon specifically refers to the ecclesiastical authorities, to those whose specific *munus ecclesiasticum* calls for the "officium et ius advigilandi."

2. The equivalent norm of *CIC*/1917 (c. 842) gave preference to *the right* of the authorities to see to the compliance with the requested obligations for Masses over the *duty* incumbent upon them in this matter and with the same objective. In the development of the new *CIC* all of the members of the *coetus* thought it acceptable to change the beginning words of the canon cited from *CIC*/1917.[1] Thus—and this is how the definitive text of the canon remained— the duty (*officium*) is cited rather than the right (*ius*) of the local ordinary or of the appropriate superior in its place. This change in the order of the initial words of the norm expresses with greater accuracy the profound meaning of *service* that the hierarchical ministry has in the Church, and one that the last Ecumenical Council clearly emphasized (cf. *LG* 24). On the other hand, the present normative language reflects better the nature of things. The right of the pertinent authorities to be watchful in this matter is there to make compliance possible with an obligation that cannot be renounced.

1. Cf. *Comm.* 13 (1981), p. 438.

3. Acebal emphasizes "the importance that the Church has always accorded to the pending Mass obligations" together with the "sensitivity and consideration employed in every case to moderate them."[2] The responsibility for ascertaining compliance with the Mass charges includes, if it were the case, the request for reduction of such charges (cf. c. 1308).[3]

4. Canon 842 *CIC*/1917 pointed out that the responsibility and aptitude for the vigilance on this matter, in the churches of religious orders, was the province of their superiors. In the *schema* for the revision of the *CIC*, whose text was accepted by all of the *coetus* members, "churches for religious orders" had been changed to "churches of the institutes for consecrated life."[4] In this expression, the *institutional* dependency of these churches proved to be in clearer language, and, on the other hand, the secular institutes were implicitly included next to the religious institutes, to which therefore the churches could also be entrusted. However, the definitive version of the canon changes again, so that reference is made to "churches of religious institutes or societies of apostolic life." Perhaps the change occurs because, as a rule, the members of the clergy of secular institutes—unless through concession of the Apostolic See they were incardinated in the same institute—remain incardinated in the particular church for whose service it had been promoted (cf. c. 266 § 3), and then the churches in which they work, in principle, would be subject to the obligation and law of the vigilance of the local ordinary.

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2. Cf. J.L. ACEBAL, "Comentario a la Notificación de la Secretaría de Estado de 29-XI-1971," in *Revista Española de Derecho Canónico* 29 (1973), pp. 141–142.

3. Cf. A. BENITO Y DURÁN, "Memorias de Misas y su reducción canónica en el monasterio de San Basilio Magno de Madrid," in *Revista Española de Derecho Canónico* 38 (1982), pp. 553–573.

4. Cf. *Comm.* 13 (1981), p. 438.

958 **§ 1. Parochus necnon rector ecclesiae aliusve pii loci, in quibus stipes Missarum recipi solent, peculiarem habeant librum, in quo accurate adnotent Missarum celebrandarum numerum, intentionem, stipem oblatam, necnon celebrationem peractam.**

§ 2. Ordinarius obligatione tenetur singulis annis huiusmodi libros per se aut per alios recognoscendi.

§ 1. The parish priest, as well as the rector of a church or other pious place in which Mass offerings are usually received, is to have a special book in which he is accurately to record the number, the intention and the offering of the Masses to be celebrated, and the fact of their celebration.

§ 2. The Ordinary is obliged to inspect these books each year, either personally or through others.

SOURCES: § 1: c. 843 § 1
§ 2: c. 843 § 2

CROSS REFERENCES: cc. 1205ff, 555 § 1,3°, 1307 § 2, 955 §§ 3 et 4

COMMENTARY

Joaquín Calvo-Álvarez

This canon focuses on insuring that in *specific* places an adequate control on the subject of stipends be maintained in *books*.

I. The assumption, in fact, necessary to elicit the obligation to keep their own books, on the part of the parish priest or rector of a church or other pious place, is *that in those specific places* "stipes Missarum" *are often received*. Miguélez, in his commentary in the equivalent canon of the *CIC*/1917 (c. 843)—substantially the same as the one now under discussion—adhered to the opinion that, considering the choice of words, the obligation to have a special book only applied "to the churches where the stipends received for Masses are of a certain amount."[1] The present language of the norm of c. 958 § 1 allows for the same interpretation, which essentially conforms to the literal tone: "...pii loci, in quibus stipes Missarum recipi *solent*."

1. Cf. L. MIGUÉLEZ, commentary on c. 843, in L. MIGUÉLEZ-S. ALONSO MORÁN-M. CABREROS DE ANTA, *Código de Derecho Canónico y Legislación complementaria. Texto latino y versión castellana, con jurisprudencia y comentarios* (Madrid 1976).

1. It must refer to churches or "other pious places." It seems that the canon deliberately avoids a meticulous precision—it does not mention the *sacred places*, to which cc. 1205ff refer—therefore including, among the places contemplated in the norm, the broadest range of possibilities. In regard to those who are to keep this particular book, besides the rector of a church or of any other pious place where stipends are usually received—those exclusively mentioned in c. 843 § 1 *CIC*/1917—the canon we are studying adds the parish priest, although he is not mentioned, neither in the *schema*, nor did the members of the corresponding *coetus studiorum* make any reference in that respect.[2] Obviously—according to Miguélez's opinion, which we share—not all of the parish priests mentioned are obligated to keep that special book, only those belonging to those parishes where Mass stipends are *customarily* received. If this is so, it is also the duty and the right of the vicar forane to see that this book is kept and updated together with the other parish books (cf. c. 555 § 1,3°).

2. The special book for Masses discussed in the canon is different from the book of pious foundation obligations (c. 1307 § 2) that will also be kept by the parish priest or rector, as the case may be. On the other hand, although the special book for Masses has a great similarity to the one required in c. 955 § 3, the recipients of the obligation to keep one or the other book are different: broader and more indeterminate is the projection of c. 955 § 3; more specific and determinate is that of the present canon. However, it could well happen that whoever transfers to others Masses that are to be celebrated (cf. c. 955 § 3) may actually be parish priests or rectors of churches or of other pious places where stipends are usually received. In such a case, it appears that the book prescribed in c. 955 would be usable as the special book of c. 958 § 1, although, if this were to be done, in every case, the fulfilment of the obligation would be recorded. In any case, the special book of the canon we are studying has a particular *public* distinction, in reference to that of c. 955 § 3, since, by specific legal prescription, it is subject to review by the ordinary (cf. c. 958 § 2).

3. All entries made in the special book will be recorded *accurately*, and this adverb is repeated (cf. c. 955 § 4) and clarifies the procedure to be followed in this delicate subject.

II. Paragraph 2 requires the ordinary to revise periodically the special books discussed in § 1. The members of the commission did not consider this prescription superfluous—essentially the same as that of c. 843 § 2 *CIC*/1917. On the contrary, they thought it was fitting to keep it in the new *CIC* as an encouragement to the ordinary.[3]

2. Cf. *Comm.* 13 (1981), p. 438.
3. Cf. ibid.

The stated inspection of each of the special books we have discussed will have to be done by the ordinary—personally or through others—*singulis annis*. The *CIC*/1917 established the obligation of the appropriate ordinary to inspect these books at least yearly (*saltem*). The present *CIC* does not include the quoted term *saltem* in the language of the canon. Therefore, in conformity with universal law it is necessary, and *sufficient*, that the stated revision be made annually.

TITULUS IV
De sacramento Paenitentiae

TITLE IV
The Sacrament of Penance

INTRODUCTION

William H. Stetson

1. The title is made up of an introductory canon (c. 959) and 18 canons, distributed in four chapters: 1) the celebration of the sacrament (cc. 960–964); 2) the minister of the sacrament of penance (cc. 965–986); 3) the penitent (cc. 987–991); and 4) indulgences (cc. 992–997). Compared with *CIC*/1917 which is made up of 66 canons, the major differences are the elimination of the category of reserved sins (8 canons in *CIC*/1917: 893–900) and the simplification of the code. The canons of this title incorporate, with some slight variations, the Normae pastorales, the chapter dedicated to indulgences (26 canons in *CIC*/1917: 911–936 and 6 in the new of the Congregation for the Doctrine of the Faith of June 16, 1972[1]) and the Ordo Paenitentiae of the Sacred Congregation for Divine Worship of December 2, 1973.

2. For a better understanding of this canonical legislation, whose purpose is to regulate how the sacrament of penance is administered, we have to keep in mind what is commonly known, that the use of this sacrament is in a state of crisis. This crisis can be attributed to three points of doctrinal confusion. First, there is confusion about what sin is, especially mortal sin that, following the teaching of the Council of Trent, must be forgiven, after baptism, in the sacrament of penance. Second, there is confusion about the essence of the sacrament, particularly the nature of the sacramental sign. And lastly, there is a false tension between reconciliation with God and with the Church with an emphasis on the communitarian aspect of the celebration of the sacrament.

3. These questions were studied by the Synod of Bishops of 1983. On the basis of the *propositiones* of the synod fathers, John Paul II published the Apostolic Exhortation *Reconciliatio et Paenitentia* (December 2,

1. *AAS* 64 (1972), pp. 510–514.

1984.) In order to achieve a better understanding of the canons included in title IV it might be helpful to summarize the theological principles that form the basis of the discipline contained in these canons.

In the second part of *Reconciliatio et Paenitentia*, the Pope gives a contemporary catechesis on the nature of sin. "Sin, in the true and proper sense, is always an act of the person, because it is a free act of the individual person"(*RP* 16). "It is a disobedience to God, to his law, to the moral norm that God gave to man, writing and perfecting it in revelation" (*RP* 14). The Holy Father further clarifies that as an offense against God, it can only be forgiven by God. He also reiterates the traditional distinction between mortal—which breaks the supernatural relation of grace with God—and venial sin—which while being sin, does not deprive the sinner of sanctifying grace.

Reconciliatio et Paenitentia summarizes the sense of the Synod of Bishops in six *convictions* that reaffirm the principle truths of faith regarding the sacrament of penance:

a) "The first conviction is that for a Christian *the Sacrament of Penance is the ordinary way* of obtaining forgiveness and the remission of serious sin committed after Baptism" (*RP* 31).

b) "The second conviction concerns *the function of the Sacrament of Penance* for those who have recourse to it. According to the most ancient traditional idea, the sacrament is a kind of *judicial action*; but this takes place before a tribunal of mercy" (*RP* 31).

c) "The third conviction ... concerns *the realities or parts* which make up the sacramental sign" (*RP* 31). Some of these realities are *acts of the penitent*, of varying importance but each indispensable for the validity, the completeness or fruitfulness of the sign (*RP* 31). Among the acts of the penitent are mentioned: *the examination of conscience* which is an indispensable condition for *contrition* and the first essential act on the part of the penitent; *the act of contrition* which is a clear and decisive rejection of the sin committed, together with a resolution not to commit it again, out of the love which one has for God; *confession of sins* which has the value of a sign of the meeting of the sinner with the mediation of the Church in the person of the minister, whose role is, in the image of the Father, to welcome and forgive and grant *absolution;* and the last act of the penitent which is *satisfaction.*

d) In the fourth conviction the Holy Father contrasts the individual aspect—the loneliness—of the sinner in his guilt with the ecclesial dimension of the sacred minister who is the witness and representative of the ecclesial community. The individual nature and ecclesial nature are two complimentary aspects of the sacrament which the progressive reform of the Rite of Penance, especially that contained in the *Ordo Paenitentiae* promulgated by Paul VI, has sought to emphasize and to make more meaningful in its celebration.

e) The fifth *conviction* concludes with praise for the precious fruit of the forgiveness received in the sacrament of penance. Every confessional is 1) a blessed and privileged place from which separation from God is cancelled and 2) a new uncontaminated and reconciled man and world.

Finally the Pope addresses a consideration to all priests as ministers of the sacrament: "The spiritual and pastoral life of the Priest, as that of the lay faithful and religious, depends for its fervor and quality on the assiduous and conscious personal use of the sacrament of penance" (Cf. *PO* 18).

959 **In sacramento paenitentiae fideles peccata legitimo ministro confitentes, de iisdem contriti atque propositum sese emendandi habentes, per absolutionem ab eodem ministro impertitam, veniam peccatorum quae post baptismum commiserint a Deo obtinent, simulque reconciliantur cum Ecclesia, quam peccando vulneraverunt.**

In the sacrament of penance the faithful who confess their sins to a lawful minister, are sorry for their sins and have a purpose of amendment, receive from God, through the absolution given by that minister, forgiveness of sins they have committed after baptism, and at the same time they are reconciled with the Church, which by sinning they wounded.

SOURCES: —

CROSS REFERENCES: cc. 960–964

COMMENTARY

William H. Stetson

1. The traditional doctrine is summarized in this first canon of title IV. As opposed to the *CIC*/1917, the act of absolution imparted by the priest is not described as *judicial.* This does not indicate in any way that the judicial character of the sacrament has disappeared. "The reason it was decided to eliminate the adjective *judicial* was precisely the desire to avoid the restriction of this judicial character only to the act of absolution, since this character affects the whole sacramental sign."[1] The matter is also dealt with in *Reconciliatio et Paenitentia* 31 citing the Council of Trent (sess. XIV, *De sacramento Paenitentiae*, ch. 6), which stated that the sacrament should be administered in the manner of a judicial act—*ad instar actus iudicialis*. This was stated, not because it would be less judicial than other human judgments, but rather because in the sacrament of penance other elements are found that do not allow a reduction of the sacrament to those judicial acts that are merely of human law. The Sacrament of Penance is "according to the most ancient traditional idea, ... a kind of *judicial action;* but this takes place before a tribunal of mercy rather than of strict and rigorous justice, which is comparable to human tribunals

1. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 520. Cf. for the verification of this fact *Comm.* 10 (1978), p. 50 (a reference that also is made by the forementioned author).

only by analogy ..." Nonetheless, the judicial elements are present: infraction of the law, accused, judge, and judgment.

2. The juridical elements of this sacrament are drawn from two elements. First is sin, which is the infraction of divine law and of the bond of union of the ecclesial community (offense to God and the Church). Second is the reconciliation granted by mediation of the Church, represented by the priest *with authority* to issue the judgment. On the other hand, the spiritual, internal and personal element can never be absent in the law of the Church. Further, this internal and spiritual element has its own expression: the internal forum that, not being limited to the sacramental forum, arises from this sacrament and refers to the internal relationship (of conscience) between the faithful and God. Through the mediation of the Church, this relationship gives rise to the relationship of conscience between the faithful and the Church. Limited to the area of conscience, the internal forum is distinguished from the external forum in that the latter refers to external relationships among the faithful, and is the direct object of canon law.

3. In this sacrament, the juridical dimensions of the sacrament are in harmony with its function of personal reconciliation at the level of the conscience, the judicial and healing nature of the penitential sign, and the markedly individual character with its ecclesial projection: "Thus we understand why the confession of sins must ordinarily be individual not collective, just as sin is a deeply personal matter. But at the same time this confession in a way forces sin out of the secret of the heart and thus out of the area of pure individuality, emphasizing its social character as well, for through the minister of penance it is the ecclesial community, which has been wounded by sin, that welcomes anew the repentant and forgiven sinner" (*RP* 31).[2]

2. Cf. T. RINCÓN-PÉREZ, in ibid., pp. 520–522.

CAPUT I
De celebratione sacramenti

CHAPTER I
The Celebration of the Sacrament

960 **Individualis et integra confessio atque absolutio unicum constituunt modum ordinarium, quo fidelis peccati gravis sibi conscius cum Deo et Ecclesia reconciliatur; solummodo impossibilitas physica vel moralis ab huiusmodi confessione excusat, quo in casu aliis quoque modis reconciliatio haberi potest.**

Individual and integral confession and absolution constitute the sole ordinary means by which a member of the faithful who is conscious of grave sin is reconciled with God and with the Church. Physical or moral impossibility alone excuses from such confession, in which case reconciliation may be attained by other means also.

SOURCES: *SC* 72; SCDF *Normae Pastorales*, 16 iun. 1972, I (*AAS* 64 [1972] 510); *RP* 31

CROSS REFERENCES: cc. 959, 961–964, 988

COMMENTARY

William H. Stetson

1. Five canons (960–964) are integrated in Ch. I, dedicated to the *celebration of the sacrament* of penance. They regulate the issues related to the rite of celebration (cc. 960–963), and to the place (c. 964).

Based on the norms of *Reconciliatio et Paenitentia*, three distinct rites are regulated. These are: *rite A*, to reconcile a single penitent; *rite B*, to reconcile several penitents, but with individual confession and absolution; and *rite C*, to reconcile many penitents with general confession and absolution. Rites A and B are the ordinary manners of celebrating the

sacrament. They both require individual and integral confession of sins, as well as individual absolution. The distinction is that in rite A, the reconciliation is of a single penitent, while in rite B, the reconciliation of the penitent, strictly speaking, comes first, and is followed by communal celebrations in which all the penitents participate. "This new rite attempts to emphasize the communal aspect of the sacrament, but this does not indicate that the individual celebration (rite A) does not contain in itself this communal and ecclesial dimension, which is not lacking in the private celebration of the Holy Mass, nor any other liturgical sacramental action (*vid.* cc. 837 and 840)."[1] Rite C, finally, serves to reconcile a number of penitents in the exceptional situations considered in c. 961, also with the special requirements of cc. 962 and 963, and always keeping in mind the obligatory rule of c. 986.

Nothing is said in the canons regarding the manner of celebrating the sacrament of penance. This matter, obviously, is proper to the liturgical books.

2. Canon 960, the first of the chapter, "has the scope of general principle in relation to the discipline established by the canons that follow regarding general and collective confession and absolution."[2]

The content of the canon corresponds almost literally with what is taught in the *Pastoral Norms* of the SCDF of June 16, 1972.[3] It is interesting to note that the publication of these *Norms* originates in the desires outlined to the Holy See by "many Ordinaries of the place" (cf. *Preamble*) that the magisterium of the Church intervene with regard to errors in doctrine as well as in pastoral and liturgical practice, which put the nature of the sacrament of Penance, as it had been defined by the Council of Trent, in serious danger.[4]

In its *Preamble*, the *Pastoral Norms* recalled the Tridentine doctrine, especially in its reference to the integrity of the confession. That is, "that by divine Law it is necessary to confess to the priest each and every mortal sin, as well as the circumstances that modify the nature of the sin, which one will later recall in a diligent examination of conscience."[5] The *Norms* ratify this doctrine to say literally in its no. 1 that, "the teaching of the Council of Trent must continue to be firmly held and faithfully put into practice."

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1. T. RINCÓN-PÉREZ, commentary on chap. I, *De celebratione sacramenti*, in *Pamplona Com*, p. 580.
2. T. RINCÓN-PÉREZ, "Disciplina canónica del Culto Divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 523.
3. *AAS* 64 (1972), pp. 510–514.
4. Cf. *Sobre el Sacramento de la Penitencia y las absoluciones colectivas* (Pamplona 1976), pp. 31–34 (pp. 19–40 contain more recent Pontifical Documents concerning the sacrament of Penance, up until the *Ordo Paenitential* of 1973).
5. The text of the *Normas* expressly cites the CONC. TRID.: Sess. XIV, canons of *Sacramento Poenitentiae*, 4, 6–9.

3. Thus, the doctrine has not changed, nor has the discipline changed substantially when the text of the canon affirms that individual and integral confession, as well as individual absolution, continues to be not only the ordinary manner but also the *only* ordinary manner of reconciliation with God and the Church. Only physical and moral impossibility excuse from this manner of confession (cf. also *RP, Praenotanda*, 31).

Ultimately, the teaching of the Church reiterates the same doctrine: "Confession to a priest is an essential part of the sacrament of Penance: (All mortal sins of which penitents after a diligent self-examination are conscious must be recounted by them in confession, even if they are most secret and have been committed against the last two precepts of the Decalogue (cf. Ex 20, 17; Mt 5, 28), for these sins sometimes wound the soul more grievously and are more dangerous than those which are committed openly) (Council of Trent: Dz.-Sch. 1680)" (CCC, 1456).

4. The second part of the canon refers to the situations of *physical or moral impossibility* that by exception can excuse one from individual and integral confession. These situations should be understood, in all cases, within the context of individual confession: *ab huiusmodi confessione excusat.* (cf. c. 961 and commentary).

Physical impossibility is understood, to this end, as those situations that materially impede the accusation or at least, that this is not possible without recourse to extraordinary means. It is the case of speech impediment, extreme infirmity, inability to speak, lack of knowledge of the language or failure to understand it or only being able to do so through an interpreter or in writing, lack of time before imminent danger, ignorance or inculpable omission. *Moral impossibility* refers to situations like danger of breaking the sacramental seal, danger of scandal or sin for the penitent or confessor, kinship or special relationship that binds the penitent with the confessor who must hear the confession, great scruples of conscience, danger of a real threat of grave harm, and danger of infamy completely extrinsic to the confession.

In all these cases, disappearance of the circumstances that give rise to the impossibility of integral confession of all sins, renews the obligation to confess those grave sins that were not submitted directly to the power of the keys of the Church nor accused in individual confession (c. 988 § 1).[6]

5. In order to interpret this canon correctly in connection with those that follow, it should be remembered that individual and integral confession requires "not only the divine precept declared in the Council of Trent, but also the greater good of souls that, accordingly can be proven by secular experience, is obtained with the individual confession correctly administered" (*Norms...*, I). For this reason the Church, "In faithfully observing the centuries-old practice of the Sacrament of Penance—the practice of

6. Cf. T. RINCÓN-PÉREZ, commentary on c. 960, in *Pamplona Com.*

individual confession with a personal act of sorrow and the intention to amend and make satisfaction—the Church is therefore defending the human soul's individual right: the right to a more personal encounter with the crucified forgiving Christ ... As is evident, this is also a right on Christ's part with regard to every human being redeemed by him: his right to meet each one of us in that key moment in the soul's life constituted by the moment of conversion and forgiveness" (*RH* 20).[7]

7. Cf. also Ap. Exhort. *Reconciliatio et Paenitentia* of December 2, 1984, no. 31: "Algunas convicciones fundamentales."

961 § 1. **Absolutio pluribus insimul paenitentibus sine praevia individuali confessione, generali modo impertiri non potest, nisi:**

1° immineat periculum mortis et tempus non suppetat sacerdoti vel sacerdotibus ad audiendas singulorum paenitentium confessiones;

2° adsit gravis necessitas, videlicet quando, attento paenitentium numero, confessariorum copia praesto non est ad rite audiendas singulorum confessiones intra congruum tempus, ita ut paenitentes, sine propria culpa, gratia sacra mentali aut sacra communione diu carere cogantur; necessitas vero non censetur sufficiens, cumconfessarii praesto esse non possunt, ratione solius magni concursus paenitentium, qualis haberi potest in magna aliqua festivitate aut peregrinatione.

§ 2. **Iudicium ferre an dentur condiciones ad normam § 1, n. 2 requisitae, pertinet ad Episcopum dioecesanum, qui, attentis criteriis cum ceteris membris Episc oporum conferentiae concordatis, casus talis necessitatis determinare potest.**

§ 1. General absolution, without prior individual confession, cannot be given to a number of penitents together, unless

1° danger of death threatens and there is not time for the priest or priests to hear the confessions of the individual penitents;

2° there exists a grave necessity, that is, given the number of penitents, there are not enough confessors available properly to hear the individual's confessions within an appropriate time, so that without fault of their own the penitents are deprived of the sacramental grace or of holy communion for a lengthy period of time. A sufficient necessity is not, however, considered to exist when confessors cannot be available merely because of a great gathering of penitents, such as can occur on some major feastday or pilgrimage.

§ 2. It is for the diocesan Bishop to judge whether the conditions required in § 1 n. 2 are present; mindful of the criteria agreed with the other members of the Bishops' Conference, he can determine the cases of such necessity.

SOURCES: § 1,1°: *SAP* Facul., 30 aug. 1939, 2–3; *SCCong Index facultatum*, 8 dec. 1939, 14b (*AAS* 31 [1939] 712); *SAP* Instr. *Ut dubia*, 25 mar. 1944, I (*AAS* 36 [1944] 155–156); SCDF *Normae Pastorales*, 16 iun. 1972, II (*AAS* 64 [1972] 511); *RP* 31

§ 1,2°: SCDS Ind., 22 apr. 1940; *SAP* Resp., 10 dec. 1940 (*AAS* 32 [1940] 571); *SAP* Instr. *Ut dubia*, 25 mar. 1944, II (*AAS* 36 [1944] 156); SCDF *Normae Pastorales*, 16 iun. 1972, III (*AAS* 64 [1972] 511); *RP* 31; SCDF Resp., 20 ian. 1978; PAULUS PP. VI, Alloc., 20 apr. 1978 (*AAS* 70 [1978] 330–331); IOANNES PAULUS PP. II, Alloc., 30 ian. 1981 (*AAS* 73 [1981] 203)
§ 2: SCDF *Normae Pastorales*, 16 iun. 1972, V (*AAS* 64 [1972] 512); *RP* 32

CROSS REFERENCES: cc. 960, 962, 963

COMMENTARY

William H. Stetson

1. The canons that regulate the discipline regarding general absolution (cc. 961–963) have as an immediate source the Pastoral Norms *Sacramentum Paenitentiae* of the SCDF, of June 16, 1972. These *Norms*—approved by Paul VI—in the second paragraph of the introduction, maintain a doctrinal principle of a dogmatic nature by which any norm that affects the structure of the sacrament of penance must be interpreted. It therefore has a primary value of interpretive criteria: "The Council of Trent solemnly declared that the integral and perfect remission of sins requires from the penitent three acts that are parts of the sacrament, that is, contrition, confession and satisfaction; it also declared that absolution given by a priest is an act of judicial order, and that by divine law it is necessary to confess to the priest each and every mortal sin, as well as the circumstances that modify the nature of the sin, which the penitent will remember through a diligent examination of conscience."[1]

As Rincón-Pérez stated, "the requirement to integrally confess sins prior to absolution is founded in the divine law, and even pertains to the sacramental structure of, which is never dispensable, even when exceptional circumstances permit the issuance of collective absolution. In these cases, prior contrition and confession are also required, although due to physical or moral impossibility this may be generic. When the moment arrives, grave sins not confessed should be submitted to the power of the keys."[2] We do not, therefore, address a disciplinary issue in which the Church cautiously introduces some modifications, but rather a dogmatic requirement: "as absolution demands individual and integral confession,

1. *AAS* 64 (1972), p. 510.
2. T. RINCÓN-PÉREZ, "Disciplina canónica del Culto Divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 524.

this also requires individual absolution; since both the act of absolution of the confessor, judge and physician, and the acts of the penitent, essentially integrate the sacramental act."[3]

2. Canons 961–963 incorporate the discipline of general absolution with the common law, despite some proposals during the period *de lege ferenda* suggesting its relegation to ritual or a special extra-codicial decree.[4] This legislative moment was preceded by a relatively recent history, and is directly related to the two world wars.[5]

a) The first documents are the *Declaratio* of the *SAP* of February 6, 1915, which addresses the situation of soldiers about to enter combat, and the faculties conceded by Pius XII through the *SCCong* of December 8, 1939.[6]

b) Later, the *SAP*, though the Instruction *Ut dubia* of March 25, 1944,[7] reordered all the materials. It introduced the novelty of conceding the faculty of group absolutions not only under danger of death in war or other situations, but also "if another manifestly grave or urgent need is present, in proportion to the gravity of the divine precept of the integrity of the confession." This document would be the foundation that inspired the later norms.

c) On June 16, 1972, the SCDF, with the special approval of Paul VI, published the aforementioned Pastoral Norms *Sacramentum Paenitentiae*.[8] It is known—as explained in the proper *Norms* in its introduction—that its publication was the result of the request of many ordinaries for a magisterial intervention to correct errors of doctrine and pastoral practice and the liturgical abuses that endangered the nature of the sacrament as it had been defined. This explains that, while the Instruction of 1944 did not explicitly mention the Council of Trent—although its doctrine was present—the *Norms* of 1972 began by stating that "the teaching of the Council of Trent must continue to be firmly held and faithfully put into practice," with special mention concerning the integrity of confession.

d) Finally, on December 2, 1973, the *Ordo Paenitentiae* was promulgated. Vatican Council II had ordered "the rite and formulae of Penance are to be revised so that they more clearly express both the nature and effect of the sacrament" (*SC* 72). In completing the conciliar mandate, by

3. Ibid.
4. Cf. *Comm.* 15 (1983), pp. 204–205.
5. To trace this evolution, one might look to, among others, T. RINCÓN-PÉREZ, "Documentos Pontificios más recientes acerca del Sacramento de la Penitencia," in *Sobre el Sacramento de la Penitencia y las absoluciones colectivas* (Pamplona 1976), pp. 19–49; and J. MANZANARES, "De absolutione sacramentali generali in casu gravis necessitatis considerationes," in *Periodica* 76 (1987), pp. 123–130.
6. Respectively: *AAS* 7 (1915), p. 72; *AAS* 31 (1939), p. 712.
7. *AAS* 36 (1944), pp. 155–156.
8. *AAS* 64 (1972), pp. 510–514.

the end of 1966 the works to reform the *Ordo* were already in progress. Nonetheless, it was not promulgated until 1973, a year after the *Pastoral Norms* that served as the doctrinal basis to the disciplinary and liturgical reform of the sacrament of reconciliation. The Rite of Penance faithfully received the discipline of the *Norms* and established the rite based upon which absolution could be imparted.

e) New interventions of the ecclesiastical magisterium would still be needed to address incorrect interpretations of the *Norms* of 1972. These would emphasize the truly exceptional nature of the legitimate circumstances of collective absolution, while calling to mind the divine precept of integral confession of all sins. These included clarifications by the SCDF regarding general absolution (Ochoa, *LE* V, 4487); SCDF, Reply of January 2, 1978 (Ochoa, *LE* V, 4555); Discourse of Paul VI of April 20, 1978 (*AAS* 70, 1978, pp. 328–332); Discourse of John Paul II of January 30, 1981 (*AAS* 73, 1981, 201–204); Apostolic Exhortation *Reconciliatio et Paenitentiae*, December 2, 1984.

Lastly, the *Explanatory note of canon 961*, of the CPITL, November 8, 1996, should be mentioned.[9] The *Note* again affects the substantial interpretational elements of the norm in accordance with the preceding pontifical doctrine.(Cf. T. Rincón-Pérez, "Los derechos de los fieles y el sacramento de la penitencia (a propósito de dos notas recientes del PCITL)," in *Ius Canonicum* 39 (1999), pp. 227–229).

3. The canon we discuss repeats almost literally nos. III and V of the *Pastoral Norms*, which had been extracted from the *Ordo*. The disciplinary aspects of the *Ordo* should be arranged in the *CIC* according to what was established in the Decree of the SCSDW of September 12, 1983.

The literal tenor of the text—and in agreement with all the prior discipline—can assert the exceptional nature of the faculty conceded here: "with the consequence—as emphasized by Manzanares—that this pastoral formula cannot be spoken of as something *optional*. The exceptional nature clearly refers to the beginning of c. 961 § 1, and, therefore to the strict interpretation of the recognized exceptions (cf. c. 18)."[10]

In this sense Rincón-Pérez noted, "[T]he history of the proper text of c. 961 gives us a restrictive interpretation of the exceptional situations that legitimize general absolution.[11] In effect, and after very advanced preparatory words, § 1 was written in the first *schemata* of a positive formula: "absolution can, and even should, be imparted in a general manner ..." This formula has been significantly changed to the negative "cannot be

9. *Ius Ecclesiae* 9 (1997), pp. 818-821.

10. J. MANZANARES, in *Nuevo Derecho Parroquial*, 2nd ed. (Madrid 1990), p. 265.

11. Commentary on c. 961, in *Pamplona Com.* "Also, the tenor of the wording of c. 961 ... shows the exceptional nature of reconciliation through general absolution": PCILT, *Explanatory note*..., cit. no. 4. The *Note* itself sets forth the fundamental milestones in the drafting of the text in order to stress this exceptional nature.

given ... unless."[12] With reference to § 2, the first *schemata* of revision and in agreement with both the *Pastoral Norms* of 1972 (no. V) and *Ordo* (no. 32), the determination of the existence of an "other grave necessity" is left to the judgment of the confessor, whenever it is not possible to present the situation to the local ordinary. However, this reference definitively disappears in the canon, and indiscriminate and illegitimate use of general or collective absolution has no legal foundation.[13]

4. In light of the above, and looking now at the text of the canon, the discipline of general absolution can be outlined in the following propositions:

a) The two conditions of the canon (§ 1, 2°)—an insufficient number of confessors and that the penitents are forced to be deprived of sacramental grace or of holy communion—must be demonstrated *together*;

b) the reunion of a great number of the faithful for the celebration of penance does not justify *per se* general absolution. The faithful who have been summoned, in any case, may have been able to confess previously, or may do so at a later time. No obligation or necessity—much less any right—exists for doing so at that specific moment, especially if the precept of c. 986 is fulfilled.[14] Consequently, the legitimate use of Rite B (see commentary on c. 960) would fail to be lawful, if it were forcibly transformed into Rite C, prescribed for collective absolution. If there are not enough confessors, and the second condition does not exist, as many as possible should confess, and the remaining penitents should do so at another time, place or day.

"In the life of the Church, general absolution cannot be given as a normal pastoral alternative, nor as a means of overcoming any difficult situation. It is only permitted in special situations of extreme necessity." It is of an "absolutely exceptional nature" (Paul VI).[15] Collective absolution "cannot be transformed into an ordinary occurrence" (*RP* 3).[16]

c) With respect to § 2, to the extent by which the "required conditions of § 1" are accepted, the broad affirmation of Paul VI that "the Ordinaries are not authorized to change the required conditions, to substitute other conditions for those given, or to determine grave necessity according to

12. Cf. *Comm.* 10 (1978), pp. 52–53.
13. Cf. ibid.
14. "The obligation sanctioned by c. 960 finds ratification and confirmation with the norm established in c. 986 § 1": *Explanatory note...*, cit. n. 1. The *Note* transcribes the text of canon 986 and very significantly adds: "That is, in fact, a fundamental right of the faithful and a grave duty of justice of the 'sacred pastors' (cf. canons 213 and 843)".
15. PAUL VI, *Address*, April 20, 1978, in *AAS* 70 (1978), pp. 328–332). Cf. also *Explanatory note...*, cit., n. 3.
16. JOHN PAUL II, Ap. Exhort. *Reconciliatio et Paenitentiae*, 33.

their personal criteria, however worthy"[17] remains valid. The bishop—John Paul II further maintains—"will give this judgment with a grave obligation on his own conscience, with full respect for the law and practice of the church."[18]

In addition, in the definitive wording of § 2, the provision allowing the bishop to determine the cases of such necessity through *generali quoque ordinatione* has been suppressed.

d) With respect to judgment of the required conditions (§ 2), the obligation imposed on the bishop in the *Norms* to exchange impressions (*collatis consiliis*) with the remaining members of the bishops' conference before making any decision, is weighted by the literal tenor of the canon, when it says, "mindful of the criteria agreed ..." (*attentis criteriis... concordatis*). As Manzanares maintains, "it is not that the bishops' conference exercises a legislative power, expressly excluded, in this case, but rather it wishes to avail a pastoral agreement, which avoids surprise and confusion to the faithful, who are still greatly concerned with the crisis in relation to this sacrament."[19]

e) Finally, it would be advisable to remember that, in all cases, the faithful have the right to a proper individual, oral and secret confession.

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17. PAUL VI, *Address* cit.
18. Ap. Exhort. *Reconciliatio et Paenitentiae*, 33.
19. *Nuevo Derecho Parroquial*, cit., pp. 267–268.

962 **§ 1. Ut christifidelis sacramentali absolutione una simul pluribus data valide fruatur, requiritur non tantum ut sit apte dispositus, sed ut insimul sibi proponat singillatim debito tempore confiteri peccata gravia, quae in praesens ita confiteri nequit.**

§ 2. Christifideles, quantum fieri potest etiam occasione absolutionis generalis recipiendae, de requisitis ad normam § 1 edoceantur et absolutioni generali, in casu quoque periculi mortis, si tempus suppetat, praemittatur exhortatio ut actum contritionis quisque elicere curet.

§ 1. For a member of Christ's faithful to benefit validly from a sacramental absolution given to a number of people simultaneously, it is required not only that he or she be properly disposed, but also that he or she be at the same time personally resolved to confess in due time each of the grave sins which cannot for the moment be confessed.

§ 2. Christ's faithful are to be instructed about the requirements set out in § 1, as far as possible even on the occasion of general absolution being received. An exhortation that each person should make an act of contrition is to precede a general absolution, even in the case of danger of death if there is time.

SOURCES: § 1: *SAP* Ind., 30 aug. 1939, 2; *SAP* Resp., 10 dec. 1940; *SAP* Instr. *Ut dubia*, 25 mar. 1944, IV (*AAS* 36 [1944] 156); SCDF *Normae Pastorales*, 16 iun. 1972, VI (*AAS* 64 [1972] 512); *RP* 33
§ 2: *SAP* Instr. *Ut dubia*, 25 mar. 1944, V (*AAS* 36 [1944] 155–156); SCDF *Normae Pastorales*, 16 iun. 1972, VIII (*AAS* 64 [1972] 513); *RP* 33

CROSS REFERENCES: cc. 960, 961, 963

COMMENTARY

William H. Stetson

1. This canon recalls the substance of nos. VI and VIII of the *Pastoral Norms* of 1972[1] regarding the *common* requirements for the validity of all sacramental confessions. It also addresses the specific requirement—*ad*

1. SCDF, *Pastoral norms*, June 16, 1972, *AAS* 64 (1972), pp. 510–514.

validitatem—for the case of general absolution: the *resolution* to make, in due time, an individual confession of all grave sins that under the given circumstances the penitent could not confess (cf. c. 988).

Canon 962 makes explicit what was only implied in the *Pastoral Norms*. That is, the resolution to make an individual confession in due time is necessary *ad validitatem*. Once again the obligation to fulfill the divine (indispensable) precept of *integral* confession is reaffirmed. [2]

2. In order to emphasize this essential requirement, § 2 establishes the need for adequate instruction to the faithful in this regard. The literal tenor of the text seems to infer the need, on one hand, for general instruction to this respect. In addition, whenever possible, instruction should be given *at the moment* of granting a general absolution. In any case, the faithful should be advised—even in the case of danger of death, if there is time—to make a personal act of contrition.

Although the legal text does not make an express mention of it, it is essential that, among the contents of the mentioned instruction, the priest makes known to the faithful—as specified in the *Norms*—"that those whose conscience is burdened with mortal sin, and have a confessor at their disposition, are prohibited from purposely or out of negligence failing to satisfy the obligation of individual confession, awaiting an occasion when general absolution will be given to many simultaneously."[3]

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2. Cf. PCILT, *Explanatory note of canon 961 of the CIC*, of November 8, 1996 (*Ius Ecclesiae* (1997), pp. 818–821, no. 5), where it notes that "the proper application of the norms related to general absolution also requires observance of everything provided in the successive canons 962 and 963." And it adds that as a requirement *ad validitatem* "also required of the necessary provisions for confession by the ordinary means is the purpose of individually confessing all grave sins that one could not confess due to the state of grave necessity."

3. SCDF, *Pastoral norms*..., cit., no. VIII (see, regarding these *Normas*, the commentary on c. 960).

963 **Firma manente obligatione de qua in can. 989, is cui generali absolutione gravia peccata remittuntur, ad confessionem individualem quam primum, occasione data, accedat, antequam aliam recipiat absolutionem generalem, nisi iusta causa interveniat.**

Without prejudice to the obligation mentioned in Can. 989, a person whose grave sins are forgiven by a general absolution, is as soon as possible, when the opportunity occurs, to make an individual confession before receiving another general absolution, unless a just reason intervenes.

SOURCES: *SAP* Instr. *Ut dubia*, 25 mar. 1944, IVb (*AAS* 36 [1944] 156); SCDF *Normae Pastorales*, 16 iun. 1972, VII (*AAS* 64 [1972] 512–513); *RP* 34; IOANNES PAULUS PP. II, Alloc., 30 ian. 1981 (*AAS* 73 [1981] 201–204)

CROSS REFERENCES: cc. 960–962, 988–989

COMMENTARY

William H. Stetson

1. The logic of the *Pastoral Norms* of the *Ordo Paenitentiae* and of the canons of this chapter place in evidence that the generic confessions with general absolution are not an exception to the divine precept of integral confession of mortal sins. The Church does not have the power to change the substance of the sacraments as instituted by Jesus Christ. But neither does it address a simple application of the principle that no one is obligated to perform the impossible. “In fact—as Rincón-Pérez observes[1]—although there does exist a true physical or moral impossibility to confess individually to a confessor, the *action of the penitent*, which is an essential part of the matter of the sacrament, is still necessary: that of confessing to the extent possible with an effective desire to complete the confession when the reasons that prevented the fulfillment of the obligation have disappeared. This is why the penitents in cases of general absolution must manifest generally that they recognize that they are sinners.”

2. Once the general absolution has been imparted, and the requirements *ad validitatem* of c. 962 have been fulfilled, as have all other requisites called for in canon and liturgical laws, all sins are pardoned. Nonetheless, the divine precept of integral confession that is circumstantially suspended due to causes outside of the confession and the will of

1. Commentary on c. 963, in *Pamplona Com.*

the subject remains after the general absolution has been received. It weighs on the conscience of the penitent in the sense that they are still obliged to make an individual confession as soon as possible, in order to confess all the grave sins that have not been expressed in a valid sacramental confession. "In the case of mortal sin, after the general absolution, the obligation to make a specific sacramental confession of the sin persists."[2]

3. This canon, in accordance with the previous one, maintains that general absolution does not satisfy the annual confession prescribed in c. 989. It also maintains that, where no just cause exists (c. 961) another general absolution cannot be received without first making an individual confession.[3] It is precisely the latter that would not be necessary in light of what has been prescribed previously. This clearly emphasizes the firm will of the legislator to avoid any type of extensive interpretation of the exceptional cases prescribed, in the sense of changing them, by practice, to an ordinary means of reconciliation of sins. Only "for grave pastoral reasons and *under precise and indispensable norms,* to facilitate the supreme good of the grace of many souls, has (the Church) broadened the use of general absolution."[4] "The norms and regulations given on this point, which are the result of mature and balanced consideration, must be accepted and applied in such a way as to avoid any sort of arbitrary interpretation. ...While it is true that, when the conditions required by canonical discipline occur, use may be made of the third form of celebration, it must not be forgotten that this form cannot become an ordinary one, and it cannot and must not be used-as the synod repeated-except "in cases of grave necessity." And there remains unchanged the obligation to make an individual confession of serious sins before again having recourse to another general absolution" (*RP* 33).

2. JOHN PAUL II, *Address to the Sacred Apostolic Penitentiary,* January 30, 1981, in *AAS* 73 (1981), pp. 201–204.

3. Cf. PCILT, *Explanatory Note of canon 961 of the* CIC, of November 8, 1996 (*Ius Ecclesiae* 9 [1997], pp. 818–821), n. 5, where it notes that "the proper application of the norms related to general absolution also requires observance of everything provided in the subsequent canons 962 and 963." And it adds: "[canon] 963, although it does not specifically determine a precise time within which this individual confession must take place, nonetheless establishes clear normative criteria: individual confession must take place before receiving another possible general absolution and must take place 'quam primum,' that is, as soon as the exceptional circumstances which gave rise to the recourse of collective absolution have ended."

4. JOHN PAUL II, *Discourse to the Sacred Apostolic Penitentiary,* January 30, 1981, in *AAS* 73 (1981), pp. 201–204 (emphasis added).

964 § 1. **Ad sacramentales confessiones excipiendas locus proprius est ecclesia aut oratorium.**

§ 2. **Ad sedem confessionalem quod attinet, normae ab Episcoporum conferentia statuantur, cauto tamen ut semper habeantur in loco patenti sedes confessionales crate fixa inter paenitentem et confessarium instructae, quibus libere uti possint fideles, qui id desiderent.**

§ 3. **Confessiones extra sedem confessionalem ne excipiantur, nisi iusta de causa.**

§ 1. The proper place for hearing sacramental confessions is a church or oratory.

§ 2. As far as the confessional is concerned, norms are to be issued by the Bishops' Conference, with the proviso however that confessionals, fitted with a fixed grille between the penitent and the confessor, always be available in an open place, so that the faithful who so wish may freely use them.

§ 3. Except for a just reason, confessions are not to be heard elsewhere than in a confessional.

SOURCES: § 1: c. 908; *RP* 12, 38b
§ 2: c. 909 § 2; *RP* 38b
§ 3: c. 910

CROSS REFERENCES: —

COMMENTARY

William H. Stetson

1. This canon establishes the oratory as the *proper* place to administer the sacrament of Penance. The thought behind this precept can be found in the sacred nature of the sacrament. Since it is also an ecclesial action, it claims a sacred place as the most fitting one for its administration.[1] It is well understood that the proper place is not tantamount to being exclusive, but rather is the place most consistent with the nature of the action taking place. Therefore, nothing keeps this sacrament from being celebrated in other locations when there is a reasonable cause, nor that the competent authority permits the installation of confessionals outside of churches or oratories.

1. Cf. *Comm.* 10 (1978), p. 68.

This canon replaces cc. 908–910 of the *CIC*/1917. The most notable change from these is the disappearance of the prohibition from hearing the confession of women outside of the confessional under ordinary circumstances (c. 910 § 1 *CIC*/1917; cf. also c. 909 § 1)

2. Section 2 addresses the confessional. The most conspicuous change is noted in the faculty granted to the bishops' conference, a faculty that in all cases is connected to the common precept according to which there should be, in an open place, a confessional fitted with a fixed grille between the penitent and the confessor, which may be utilized freely by those faithful who wish to do so.

It should be noted that the reason for this precept is in all cases that the faithful may exercise their freedom: the grille—*diafragma protector*, according to the descriptive definition of Paul VI[2]—is meant to safeguard the necessary discretion, guaranteeing the right of all the faithful to confess their sins without necessarily having to reveal their personal identity.

Rincón-Pérez outlined the functions of the type of confessionals whose existence are prescribed in the canon as follows: "a) to safeguard the necessary discretion and reserve; b) to guarantee the right of all the faithful to confess their sins without having to reveal their personal identity; c) to facilitate an understanding of the sacramental nature of the act; d) to protect the right of each of the faithful (confessor and penitent) to defend their integrity and their honor from any danger or suspicion."[3]

On July 7, 1998, through a *Response* which could be described as a "truly authentic interpretation,"[4] the CPITL has significantly extended the scope of this norm. If until then the key to interpretation has been the rights of the penitent faithful æalthough here we should stress the interpretation of Rincón-Pérez, set forth above, which also mentioned the confessoræ, this response now extends the perspective to the rights of the faithful minister of the sacrament. Also, the minister of the sacrament, with a just cause and excluding the case of necessity, may legitimately decide, even if the penitent demands otherwise, that the sacramental confession will be received in the confessional equipped with a screen.[5]

3. *Ordo Paenitentiae* 38 left the determination of the proper place for the ordinary administration of the sacrament of Penance to the bishops' conference, with the goal of making the celebration more effective.

2. *Allocutio*, April 4, 1974.

3. In *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 528.

4. Cf. T. RINCÓN-PÉREZ, "Los derechos de los fieles y el sacramento de la penitencia (a propósito de dos notas recientes del PCITL)," in *Ius Canonicum* 39 (1999), p. 227.

5. Cf. PCILT, *Response* of July 7, 1998, in *Comm.* 30 (1998), p. 27. For a more detailed study of this interpretation and of issues involved in said *response*: T. RINCÓN-PÉREZ, "Los derechos de los fieles...," cit., pp. 242–252, and A. MARZOA, "La sede confesional y los derechos del penitente y del confesor," in *Fidelium Iura* 8 (1998), pp. 163–225.

This gave rise to the construction of "reconciliation chapels" or "reconciliation rooms" in many churches, where the penitents could confess in a "conversation" with the priest and receive absolution "face to face." As a consequence of this change, the traditional confessional disappeared in many churches and oratories, and with it, in many cases, the possibility of anonymity on the part of the penitent and the recommended discretion and prudence on the part of the confessor hearing the confessions of women. One must consider to what degree all this has contributed to the patent decrease in frequency of the sacrament on the part of the faithful.

During the process of revision of the Code, the prohibition from hearing the confessions of women outside of the proper confessional was again introduced. It remained as such in the successive *schemata*, including that of 1982.[6] Nonetheless, the definitive wording did not include this prescription. In practice the conferences of bishops have established in some areas that the "reconciliation chapels" must be arranged in such a way that the penitent, upon entering, may choose to confess with or without a screen. In this way, the right of the penitents to confess their sins without revealing their identity is protected. It should be noted, nonetheless, that the nature of these rooms does not always offer enough protection to the aforementioned right of the faithful to remain anonymous. Nor does it sufficiently allow for the recommended caution that pastoral prudence advises in relation to the exquisite delicacy with which the Church has always wished to surround the administration of this sacrament. Finally, it can also be questioned here to what point these solutions are faithful to the *ratio legis* that requires that the confessional be *in loco patenti*, as the canon prescribes.

4. The Spanish bishops' conference has carried out what is ordered in the canon: "In accordance with what is established in c. 964 § 2, a traditional confessional will always be present in the churches and oratories in an open place, where it can be utilized freely by the faithful who chose to do so.

"There will also be present, to the degree possible given spatial limitations, the alternative confessional anticipated in the canon, for those faithful who expressly request it, and it must be exclusively reserved for this ministry. Regarding its specific form, the conditions of each place and the diocesan directories regarding sacred and liturgical art will be kept in mind, guaranteeing, in all cases, both the facility and the privacy of the dialogue between the penitent and the confessor and the religious and sacramental nature of the act."[7]

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6. In 1981 petition was made to supress this norm, a petition which was rejected on the basis that Paul VI had been personally opposed to its supression: cf. *Comm.* 15 (1983), p. 207.

7. II General Decree, *BOCEE* 6 (1985), p. 62

CAPUT II
De sacramenti Paenitentiae ministro

CHAPTER II
The Minister of the Sacrament of Penance

965 **Minister sacramenti paenitentiae est solus sacerdos.**

Only a priest is the minister of the sacrament of penance.

SOURCES: c. 871; *PO* 5; *RP* 9a

CROSS REFERENCES: cc. 290, 1008, 1338 § 2, 1378 § 2,2

COMMENTARY

Fernando Loza

Exclusive Minister

The legislator formulates in the juridical norm an essential requirement *de iure divino*, by institution of Jesus Christ (Jn 20:22–23), and which the Church has defined as a *dogmatic truth*: that only those who have received the *ministerial priesthood* (bishops, priests) are the only ones who posses the power to pardon sins.

This "power of orders" is received in the sacred ordination (c. 1008), the sacrament that conforms them to Christ the Head, and is exercised "in persona Christi." As Vatican Council II teaches: "Through that sacrament priests by the anointing of the Holy Spirit are signed with a special character and so are configured to Christ the priest in such a way that they are able to act in the person of Christ the head" (*PO* 2).

Possibly the best commentary is found in the words of Pope John Paul II: "Here there is seen in all its grandeur the figure of the minister of the sacrament of penance who by very ancient custom is called the confessor … The priest, as the minister of penance, acts "in persona Christi."

Christ, who is made present by the priest, accomplishes the mystery of the forgiveness of sins in this way. This is undoubtedly the most difficult and sensitive, the most exhausting and demanding ministry of the priest, but also one of the most beautiful and consoling. ... I will never grow weary of exhorting my brothers, the bishops and Priests, to the faithful and diligent performance of ministry" (*RP* 29).

966 **§ 1. Ad validam peccatorum absolutionem requiritur ut minister, praeterquam potestate ordinis, facultate gaudeat eandem in fideles, quibus absolutionem impertitur, exercendi.**

§ 2. Hac facultate donari potest sacerdos, sive ipso iure sive concessione ab auctoritate competenti facta ad normam can. 969.

§ 1. For the valid absolution of sins, it is required that, in addition to the power of order, the minister has the faculty to exercise that power in respect of the faithful to whom he gives absolution.

§ 2. A priest can be given this faculty either by the law itself, or by a concession issued by the competent authority in accordance with can. 969.

SOURCES: § 1: c. 872; *RP* 9b

CROSS REFERENCES: cc. 144 § 2, 290, 508, 516, 519, 540 § 1, 541 § 1, 566, 841, 967–969, 976–977, 1338 § 2, 1378 § 2,2

COMMENTARY

Fernando Loza

I. NEW TERMINOLOGY: "FACULTY"

First of all, a terminological change, relevant in the second requirement necessary for valid absolution should be noted: the Code names it "faculty," and not "jurisdiction," as it was named and contemplated in *CIC*/1917.

The change is not purely verbal: it underlies and responds to a different theological-canonical concept—in the former and in the current discipline—concerning this sacramental power, as something quite different from the jurisdictional power of government.

In the interest of juridical precision and internal legal coherence, the Code designates it as "faculty," inasmuch as the term "jurisdiction" is reserved to identify the "power of governance" in its strictest sense, in accordance with c. 129ff; now, "absolution is not an act of the power of governance, which at present is well differentiated from the power which refers to the sphere of conscience."[1]

1. *Comm.* 10 (1978), p. 56.

The terminological-conceptual change has undoubted doctrinal and practical relevance. For example, those norms peculiar to the "potestas regiminis" (cc. 129–144) are not applicable to this "penitential faculty;" with the explicit exception that c. 144 § 2 makes—by analogy—about the "faculty" being supplied in cases of common error and of doubt "iuris vel facti."

II. The Necessary Faculty

1. To be a true and valid minister of this sacrament, two necessary and different elements are restrictively required:

a) power of order, *ex iure divino.*

b) faculty, *ex iure positivo Ecclesiae.*

Such faculty is required (and granted) by the Church in virtue of the power it has received from Christ over the sacraments (c. 841).

It is necessary to make reference to the complex and debated dispute—theological-canonical—about the peculiar nature and the specific possibility of that faculty in relation to the *power of orders*: the "munus sacrum" received in the sacred ordination. It is sufficient to quote here the conciliar doctrine of *Lumen gentium* cited in *pen* 2: "But for this power to be fully ready to act, there must be a further canonical or juridical determination through the hierarchical authority. This determination of power can consist in the granting of a particular office or in the allotment of subjects, and it is done according to the norms approved by the supreme authority."

According to such teaching by the Council, it remains clear that this "faculty" is not the "power to pardon sins" (an integrating part of the *munus sacrum,* received in the sacrament of order), but the hierarchical authorization to exercise this power. It is a positive bestowal, a juridical determination that enables the holder of the "power of order" to exercise, validly and lawfully, that same power. Therefore, sacramental absolution is an exercise of the power of orders (of the *munus sanctificandi)* for the pardon of sins, for the reconciliation of the penitent with God and with the Church (cf. *LG* 11); but in order to exercise this power validly and lawfully, the Church necessarily requires the *faculty.*

Absolution conceded by a priest lacking this faculty—at least supplied: c. 144 § 2—not only is invalid, but can give way to the commission of the offense typified in c. 1378 §§ 2–3 (see commentary).

2. There are cases, however, in which the minister of penance—within the administration of the sacrament—*also* exercises strict power of jurisdiction: when, *previous* to the pardon of the sins, certain censures are

remitted, using the jurisdictional power that is given him by the Church, either "ipso iure" (cc. 976, 1355 § 2, 1357), or "ex officio" (cc. 508, 566 § 2). Thus:

a) In danger of death: every priest may absolve *any* censure (c. 976).

b) Outside of danger of death, the following remissions may be made "in actu sacramentalis confessionis" by:

— *every bishop*: the "latae sententiae" penalties that are neither declared nor reserved to the Apostolic See (c. 1355 § 2).

— the *penitentiary*: the "latae sententiae" censures that are neither declared nor reserved to the Holy See (c. 508).

— the *chaplain*: the "latae sententiae" censures that are neither declared nor reserved (c. 566 § 2).

— *every confessor* in urgent cases: the "latae sententiae" censures, of undeclared excommunication and interdict, including those reserved to the Holy See (c. 1357).

(See, for the regimen and implications of the exercise of this power, the commentary on the respective canons).

III. Double origin of the "faculty"

Paragraph 2: by the law itself (*ab ipso iure*: *vi officii* or *vi legis*) or by the *concession* of the competent authority.

This synthesis is offered, with its corresponding canons:

a) *A iure*:

— *vi officii*: cc. 134 § 1, 262, 295 § 1, 368, 372 § 2, 427, 508, 516, 519, 540 § 1, 541 § 1, 566, 596 § 2, 620, 967–968;

— *vi legis*: cc. 976–977, 144 § 2.

b) *Ex concessione auctoritatis*: cc. 967 §§ 2–3, 969.

(See commentaries on the respective canons).

967 § 1. **Praeter Romamum Pontificem, facultate christifidelium ubique terrarum confessiones excipiendi ipso iure gaudent Cardinales itemque Episcopi, qui eadem et licite ubique utuntur, nisi Episcopus dioecesanus in casu particulari renuerit.**

§ 2. **Qui facultate confessiones habitualiter excipiendi gaudent sive vi officii sive vi concessionis Ordinarii loci incardinationis aut loci in quo domicilium habent, eadem facultatem ubique exercere possunt, nisi loci Ordinarius in casu particulari renuerit, firmis praescriptis can. 974 §§ 2 et 3.**

§ 3. **Ipso iure eadem facultate ubique potiuntur erga sodales aliosque in domo instituti aut societatis diu noctuque degentes, qui vi officii aut concessionis Superioris competentis ad normam cann. 968 § 2 et 969 § 2 facultate confessiones excipiendi sunt instructi; qui quidem eadem et licite utuntur, nisi aliquis Superior maior quoad proprios subditos in casu particulari renuerit.**

§ 1. Besides the Roman Pontiff, Cardinals by virtue of the law itself have the faculty to hear the confessions of Christ's faithful everywhere. Likewise, Bishops have this faculty, which they may lawfully use everywhere, unless in a particular case the diocesan Bishop has disapproved.

§ 2. Those who have the faculty habitually to hear confessions, whether by virtue of their office or by virtue of a concession by the Ordinary of either the place of incardination or that in which they have a domicile, can exercise that faculty everywhere, unless in a particular case the local Ordinary has disapproved, without prejudice to the provisions of can. 974 §§ 2–3.

§ 3. In respect of the members and those others who live day and night in a house of an institute or society, this same faculty is by virtue of the law itself possessed everywhere by those who have the faculty to hear confessions, whether by virtue of their office or by virtue of a special concession of the competent Superior in accordance with cann. 968 § 2 and 969 § 2. They may lawfully use this faculty, unless in a particular case some major Superior has, in respect of his own subjects, disapproved.

SOURCES: § 1: c. 873 § 1; *PM* II, 2
§ 2: cc. 514, 875

CROSS REFERENCES: cc. 134, 295 § 1, 368, 376, 381, 596 § 2, 620, 622, 968–969, 975, 976, 977, 1378 § 1

COMMENTARY

Fernando Loza

Scope of the faculty to hear confessions

The norm contemplates the territorial and/or personal scope in which the penitential "faculty" is legitimately exercised. They are different, according to the diversity of the ones holding the faculty and the origin of said faculty:

1. In virtue of § 1, the following have the faculty to hear confessions:

a) the *Roman Pontiff*, because of his supreme primacial office (cc. 331–333) possesses *iure divino* absolute the faculty everywhere and over all the faithful;

b) *Cardinals*: because of their eminent dignity (c. 351 § 2), they have *ispo iure* the faculty everywhere and over all faithful; no diocesan bishop can limit this faculty, neither as to its *validity*, not even as to the *lawfulness* of exercising it (c. 357 § 2);

c) *Bishops*: all of those who enjoy the episcopal character have the faculty *ipso iure* to exercise it, validly and lawfully, everywhere and over all the faithful. It would not be exercised lawfully only if a diocesan bishop (cc. 376, 134 § 3, 381 § 2, 368) had refused within the scope of his jurisdiction.

2. Paragraph 2 contemplates those who hold this faculty *within the framework of the hierarchic communities*. The norm notably modifies the ancient discipline, granting *universal extension* to hear confessions everywhere (*ubique*) to every priest who has this faculty, by virtue of his office or by virtue of a concession "by the Ordinary of either the place of incardination or of that place in which he has a domicile."

Who are these ordinaries?

a) *Ordinaries of the place of incardination* are those enumerated in c. 134 § 2 and their equivalents in c. 368. In sum: diocesan bishops and vicars, territorial prelates, territorial abbots, apostolic prefects and vicars, stable apostolic administrator and diocesan administrator (c. 427 § 1).

The following are also ordinaries "of the place of incardination":

— the prelate of the *personal prelature*: "whose governance is entrusted to a Prelate as its own Ordinary" and who has the power to incardinate (c. 295 § 1).

— the *military ordinary:* as ordinary belonging to the ordinariate who is equivalent in law to the diocesan bishop (*SMC* II § 1).

b) *Ordinaries of the place of domicile*: are the same as those enumerated in cc. 134 §§ 1 and 2, 368 and 427.

The norm requires—so that such universal extension occurs—that it be a question of "habitual faculty." The faculty granted "per modum actus" is not enough to exercise it validly *ubique*; the faculty that is possessed "by office" already is, for the same reason, *habitual*.

The canon establishes only one exception to the universal exercise of the habitual faculty in the final clause of § 2: if a local ordinary refuses—in a particular case and within his jurisdiction—a priest exercising it. In this case (and not in those of §§ 1 and 3), clause "nisi... renuerit" affects the validity.[1]

3. Paragraph 3 contemplates the subjects of the penitential faculty and the scope of its extension in the framework of ICL and SAL. They are pointed out in the canon with the internal reference to cc. 968 § 2 and 969 § 2: clerical religious institutes or societies of apostolic life of pontifical right with executive power of governance. The norm establishes that priests with faculty to hear confessions of the members and of those who live in the house of the institute or society, by explicit *extension* of the law, may validly and lawfully exercise the faculty—only over the faithful, determined by the norm—anywhere (*ubique*).

The exception to the final clause of § 3 ("nisi aliquis Superior maior... renuerit") only affects the *lawfulness*, as is clearly indicated in the text and punctuation of the Latin original (in reference to "Superior maior," cf. cc. 620 and 622).

It is evident that the priests who are members of an ICL or an SAL may *also* be granted the penitential faculty by the *hierarchical* channels, which are determined in cc. 968 § 1 and 969 § 1. In this case, the extension of the faculty *ubique* is governed by c. 967 § 2.

1. "Relator animadvertit verba *nisi ... renuerit* ad validitatem esse": *Comm.* 10 (1978), p. 59.

968 **§ 1. Vi officii pro sua quisque dicione facultate ad confessiones excipiendas gaudent loci Ordinarius, canonicus paenitentiarius, itemque parochus aliique qui loco parochi sunt.**

§ 2. Vi officii facultate gaudent confessiones excipiendi suorum subditorum aliorumque, in domo diu noctuque degentium, Superiores instituti religiosi aut societatis vitae apostolicae, si sint clericales iuris pontificii, ad normam constitutionum potestate regiminis exsecutiva fruentes, firmo tamen praescripto can. 630, § 4.

§ 1. By virtue of his office, for each within the limits of his jurisdiction, the faculty to hear confessions belongs to the local Ordinary, to the canon penitentiary, to the parish priest and to those who are in the place of the parish priest.

§ 2. By virtue of their office, the faculty to hear the confessions of their own subjects and of those others who live day and night in the house, belongs to the Superiors of religious institutes or of societies of apostolic life, if they are clerical and of pontifical right, who in accordance with the constitutions have executive power of governance, without prejudice however to the provision of can. 630 § 4.

SOURCES: § 1: c. 873 §§ 1–2

CROSS REFERENCES: cc. 134 § 2, 145, 262, 368, 516 § 1, 517 § 1, 518, 519, 520, 540 § 1, 541 § 1, 543 § 1, 564, 566, 596 § 2, 620, 630 § 4, 967 §§ 2 et 3, 985

COMMENTARY

Fernando Loza

Faculty "vi officii" to hear confessions

This canon determines the origin of the faculty to hear confessions *vi officii.* (For the origin by concession, cf. c. 969)

1. In § 1 the norm contemplates the penitential faculty of the office-holders *vi officii, within the framework of the diocesan hierarchical communities* (and *the equivalent communities*, in accordance with c. 368).

There are several office holders, although the canon does not enumerate them exhaustively; they are, in sum, "pro sua quisque dicione":

— the local ordinary (c. 134 § 2)

— the penitentiary (c. 508)

— the parish priest and to those who "are in the place of the parish priest" (cc. 519, 516 § 1, 517 § 1, 518, 520, 540 § 1, 541 § 1, 543 § 1)

— the rector of a seminary (c. 262)

— the chaplain (cc. 564 and 566)

— the rector of a church (c. 556)

2. The following also possess the same faculty "vi officii":

— the military ordinary (*SMC* I–III)

— the prelate of a personal prelature (c. 295 § 1)

(both are endowed *a iure* with the power and office of "Ordinaries")

— those who govern a particular church, in accordance with c. 372 § 2

3. Paragraph 2 establishes—within the framework of ICL and SAL—those who possess "vi officii" the penitential faculty. In order to determine them, it previously and restrictively identifies which institutions and societies are referred to: those that are clerical and of pontifical right. It establishes that in those institutions and societies, the following are office holders of the faculty *vi officii*: "the Superiors... who in accordance with the constitutions have executive power of governance." These are, therefore:

— the major superiors (c. 620): who truly possess the executive power of governance (cc. 596 § 2, 732) and are *ordinaries* (c. 134 § 1); and who consequently always possess *vi officii* the penitential faculty for themselves and to grant to others (c. 969 § 2)

— other superiors: only have *vi officii* this faculty *if* and *when* they have been given "executive power of governance."

— the abbot primate and superior of a monastic congregation (c. 620): who are comparable to major superiors and who have the benefit *a iure* of a certain executive power. They are also included as titulars of the faculty, by virtue of their office.

4. The canon ends with an internal reference to c. 630 § 4 (see commentary) where it is stated that "Superiors are not to hear the confessions of their subjects unless the members spontaneously request them to do so." Both norms are compatible: it is one thing to determine the origin of the penitential faculty *vi officii* of the superiors, and it is another to establish that these should not—normally *and* customarily—hear the confessions of their subjects. In c. 630 § 4 the habitual exercise of this faculty is prohibited (*ad liceitatem*), but such prohibition is not absolute: the

norm points it out ("nisi sponte sua sodales id petant") and it is restricted strictly to the subjects. In this way, the legislator wishes to guarantee (through c. 630 §§ 4–5) the freedom of conscience of the subject and the necessary distinction between the external forum (government of the superior) and the forum of conscience (confessions of the subjects: cf. c. 984 § 2).

969 **§ 1. Solus loci Ordinarius competens est qui facultatem ad confessiones quorumlibet fidelium excipiendas conferat presbyteris quibuslibet; presbyteri autem qui sodales sunt institutorum religiosorum, eadem ne utantur sine licentia saltem praesumpta sui Superioris.**

§ 2. Superior instituti religiosi aut societatis vitae apostolicae, de quo in can. 968, § 2, competens est qui facultatem ad excipiendas confessiones suorum subditorum aliorumque in domo diu noctuque degentium presbyteris quibuslibet conferat.

§ 1. Only the local Ordinary is competent to give to any priests whomsoever the faculty to hear the confessions of any whomsoever of the faithful. Priests who are member of religious institutes may not, however, use this faculty without the permission, at least presumed, of their Superior.

§ 2. The Superior of a religious institute or of a society of apostolic life, mentioned in can. 968 § 2, is competent to give to any priests whomsoever the faculty to hear the confessions of his own subjects and of those others who live day and night in the house.

SOURCES: § 1: c. 874 § 1
§ 2: c. 875

CROSS REFERENCES: cc. 134 §§ 1 et 2, 295 § 1, 368, 372, 427, 967 §§ 1 et 2, 971

COMMENTARY

Fernando Loza

Faculty to give permission to hear confessions

This canon determines the origin of the penitential faculty by concession of the competent authority (for the faculty *vi officii*, cf. c. 968).

1. Paragraph 1 contemplates who this authority is in the *hierarchical scope of the diocese and its equivalents.* The norm indicates: "Only the local Ordinary is competent to give to any priests the faculty to hear the confessions of any of the faithful." The "local Ordinaries" are enumerated in c. 134 § 2; the equivalent to the Ordinaries are enumerated in cc. 368 and 427; those who are "placed over a particular Church or over a community

which is equivalent to it" (c. 134 § 1); or those who govern a particular ritual or personal church, established in accordance with c. 372 § 2.

These ordinaries may grant the penitential faculty over their own faithful to *any* priest (incardinated or not, secular or religious, resident or transient), because the concession of this faculty requires executive power over the faithful, but not over the priest to whom it is granted. It is important, however, to heed the precept of c. 971: consult first with the priest's ordinary.

He who received the faculty in this way only has it *vi concessionis* in the hierarchical jurisdiction of the one who granted it, although it is extended *ubique vi legis* (c. 967 § 2), if it is a habitual faculty.

Priests who are members of religious institutes should not use such a faculty—received from the local ordinary—without at least the presumed permission of their superior; this requirement only affects the lawfulness of its exercise.

Here the military ordinary and the personal prelate are also included for their subjects (see commentaries on cc. 967 and 968)

2. Paragraph 2 determines who is the competent authority in the *jurisdiction of a religious institute or of a society of apostolic life*, exactly as they are identified in c. 968 § 2. The same superiors from § 2 of the cited canon are competent to grant the penitential faculty: those who "in accord with the norms of their constitutions, possess executive power of governance" (see commentary on c. 968). It should be noted that the Code does not contemplate *secular institutes* (cc. 710–730) as areas of origin and concession of the penitential faculty.

The competency of these superiors to concede that faculty to *all* priests is *total*; however, it is strictly limited in that it refers to the penitent: only over the members and those who live in the houses of such institutes and societies. Therefore, the following are competent: the provincial superior, over the houses of his province or circumscription; the general superior, over all the members and houses of the institute or society. The extension *vi legis* of this granted faculty is governed by that which is established in c. 967 § 3.

It should be noted, finally, that in considering the lawfulness of a concession, that which is indicated in c. 970 must be taken into account.

970 **Facultas ad confessiones excipiendas ne concedatur nisi presbyteris qui idonei per examen reperti fuerint, aut de eorum idoneitate aliunde constet.**

The faculty to hear confessions is not to be given except to priests whose suitability has been established, either by examination or by some other means.

SOURCES: c. 877

CROSS REFERENCES: cc. 213, 248, 252, 256, 279, 840, 974–975, 978

COMMENTARY

Fernando Loza

1. *Suitability of the minister of penance*

In no other sacrament (in which a priest is the minister) is the person, preparation and qualities of the minister so relevant and decisive. The ministerial "actio hominis" acquires, in this sacrament, a unique importance for its adequate and dignified administration, as c. 978 emphasizes. Indeed, the "salus animarum" is at play, as the code proclaims in its last canon: "which in the Church must always be the supreme law" (c. 1752).

The norm requires as the indispensable condition and requisite to grant (by office or by concession) the penitential faculty, that the *suitability* of the priest be positively evident. The verification of this required aptitude burdens the conscience and responsibility—before God and the Church—of the grantors. The duty of the pastors to make sure that the sacraments are administered with "the greatest reverence and due care" (c. 840) corresponds to the right of the Christian faithful to receive those sacraments (c. 213).

It is notable that the canon expressly determines that this faculty "is not to be given except to priests whose suitability has been established ..." From here, it can be inferred that the mind of the legislator is that the faculty should not be granted to all priests just because they are priests.

Such requisite is not, therefore, a secondary formality to be ignored in the concession of the penitential faculty. On the contrary, it should be prudently verified beforehand; and even after the faculty has been granted, it can and should be revoked due to a serious reason (cc. 974–975).

2. *Components of this suitability*

This suitability has three components: knowledge, prudence and authenticity of sacerdotal life. This is expressed by Pope John Paul II in the following way: "For the effective performance of this ministry, the confessor must necessarily have *human qualities* of prudence, discretion, discernment and a firmness tempered by gentleness and kindness. He must likewise have a serious and careful preparation, not fragmentary but complete and harmonious, in the different branches of theology, pedagogy and psychology, in the methodology of dialogue and above all in a living and communicable knowledge of the word of God. But it is even more necessary that he should live an intense and genuine spiritual life. In order to lead others along the path of Christian perfection, the minister of penance himself must first travel this path. More by actions than by long speeches he must give proof of real experience of lived prayer, the practice of the theological and moral virtues of the Gospel, faithful obedience to the will of God, love of the Church and docility to her magisterium.

Every priest must be trained for the ministry of sacramental penance from his years in the seminary, not only through the study of dogmatic, moral, spiritual and pastoral theology ... He must then be guided and looked after in his first activities. He must always ensure his own improvement and updating by means of permanent study" (*RP* 29).

The theoretical-practical aspect of the preparation for the sacrament of penance should be cared for, in both the previous and the permanent formation of priests (c. 279); all the more due to the fact that each day there are new and more complex issues which require serious and profound study.

3. *Means of verifying suitability*

The norm specifically indicates that the required aptitude must be proven: "by examination," although they admit that it can be proven "by some other means." An examination is the most common method, sanctioned through experience, in order to prove and evaluate if the person possesses sufficient knowledge. And, since that the Code proposes and indicates this, the possibility of such an exam should not be discarded as a common and ordinary means to verify the aptitude (at least the knowledgeable aptitude) of the priest. It must be remembered that this examination—with its diverse modalities in each region—has for centuries been the means by which such aptitude is proven, before granting "the permissions," as the penitential faculty is sometimes called.

This norm was written in such a way as to require practical application and concrete development of this particular law, as is shown in the following examples:

— a specific examination is required, previous to the first concession of the faculty;

— three-year or five-year examinations may be established (for as long as the ordinary considers correct).

— a new examination, if a positive and well-founded doubt exists concerning the suitability of a priest to whom the faculty had already been granted (c. 974).

Such provisions, and other equivalent ones, will encourage priests by helping them to study in order to keep up to date with current moral issues and will be beneficial for the penitent faithful.

In short: he who grants the faculty must be sure of the suitability of the priest; the priest's aptitude must be evident; the faculty must not be granted if there exists any serious and well founded doubt concerning his aptitude. Excessive severity is not advocated; however, the legislator wishes, by means of this norm, to guarantee that the ministers are suitable and worthy of this sacrament, which is so necessary and relevant to the Christian way of life.

If the faculty is denied, and the priest considers such denial to be arbitrary and unfair, he may propose recourse—*in devolutivo*—by administrative means (cc. 1732–1739).

971 **Facultatem ad excipiendas habitualiter confessiones loci Ordinarius presbytero, etsi domicilium vel quasi-domicilium in sua dicione habenti, ne concedat, nisi prius, quantum fieri potest, audito eiusdem presbyteri Ordinario.**

The local Ordinary is not to give the faculty habitually to hear confessions to a priest, even to one who has a domicile or quasi-domicile within his jurisdiction, without first, as far as possible, consulting that priest's own Ordinary.

SOURCES: c. 874 § 1

CROSS REFERENCES: cc. 967 § 2, 969 § 1, 970–974

COMMENTARY

Fernando Loza

Coordination among Ordinaries

The local ordinary's competency to grant the penitential faculty to any priest is nuanced in this canon: when it is a matter of a priest who is not incardinated in that hierarchical circumscription. The local ordinary is not to grant this priest the penitential faculty "without first, as far as possible, consulting that priest's own ordinary."

This is preceptive when granting a *habitual* faculty, as the legal text states; but it would be prudent to consult with the priest's own ordinary in all situations. In any case, it is a requirement that only affects the lawfulness.

The purpose of this norm is for the priest's own ordinary to be able to inform the ordinary who intends to grant the faculty about the suitability of that priest; or about possible reasons which may suggest that the priest not be granted the faculty or even prohibit the granting of said faculty (for example, possible censures).

Given the present mobility, this is a prudent norm that tends to guarantee, as far as possible, a correct pastoral decision when granting this faculty.

This norm is coherent: it is required by prescription of c. 970; and a generalized failure to obey it would diminish the caution with which the legislator wished to establish the sound concession of this faculty.

972 **Facultas ad confessiones excipiendas a competenti auctoritate, de qua in can. 969, concedi potest ad tempus sive indeterminatum sive determinatum.**

The faculty to hear confessions may be given by the competent authority mentioned in Can. 969, for either an indeterminate or a determinate period of time.

SOURCES: c. 878

CROSS REFERENCES: cc. 144 § 2, 967 §§ 2 et 3; 969

COMMENTARY

Fernando Loza

Duration of the faculty to hear confessions

The duration of time for which a faculty is conceded depends on the will of the granting authority. The norm applies only to the faculty that is had *ex concessione*, since the legal text refers to c. 969, which only contemplates this type of faculty. It is evident that he who is granted the faculty ex officio possesses it "durante munere."

The canon refers to any faculty conceded, habitual or not, to hear confessions; and establishes that such faculty may be granted "for either an indeterminate or a determinate period of time." "Habitual faculty" (see c. 132 and commentary) is an *a se* concept, which is not necessarily identified with whether it was granted for a determinate or indeterminate period of time.

If it is granted for a determinate period of time, once that time has expired the faculty and therefore its legal extension expires, in accordance with c. 967 §§ 2 and 3; if, however—the determinate period of time having already expired—it is exercised by means of common error or doubt "iuris vel facti," it is considered to be valid in virtue of c. 144 § 2.

973 **Facultas ad confessiones habitualiter excipiendas scripto concedatur.**

The faculty habitually to hear confessions is to be given in writing.

SOURCES: c. 879 § 1

CROSS REFERENCES: cc. 10, 37, 129 ss., 1732 ss.

COMMENTARY

Fernando Loza

Means of granting the habitual faculty to hear confessions

The canon advises that when the habitual faculty to hear confessions is granted (see c. 132 and its commentary), it is "to be given in writing." The norm applies in this case to what is established by c. 37 regarding the administrative acts that affect the external forum.

The penitential faculty is certainly not part of the external forum, but part of the sacramental internal forum, nor, in a strict sense, is it jurisdictional (see commentary on c. 966); however, the administrative act for which it is granted is part of the external forum and is considered to belong to the "power of governance" (cc. 129ff).

The requirement that it be granted "in writing" obviously does not affect the validity of the concession. But the prescription in the canon exists for an evident reason, which is of notable importance: when given in writing, the one that receives the penitential faculty can prove that he has been granted this faculty in the external forum when this is legitimately required.

The norm only prescribes that the concession be granted in writing, not the denial of the concession. We believe, however, that the priest to whom it is denied only verbally may request that such denial and its motives be given to him in writing, in order to have documentation when proposing a possible administrative recourse (cc. 1732ff).

974 **§ 1. Loci Ordinarius, itemque Superior competens, facultatem ad confessiones excipiendas habitualiter concessam ne revocet nisi gravem ob causam.**

§ 2. Revocata facultate ad confessiones excipiendas a loci Ordinario qui eam concessit, de quo in can. 967, § 2, presbyter eandem facultatem ubique amittit; revocata eadem facultate ab alio loci Ordinario, eandem amittit tantum in territorio revocantis.

§ 3. Quilibet loci Ordinarius qui alicui presbytero revocaverit facultatem ad confessiones excipiendas, certiorem reddat Ordinarium qui ratione incardinationis est presbyteri proprius, aut, si agatur de sodali instituti religiosi, eiusdem competentem Superiorem.

§ 4. Revocata facultate ad confessiones excipiendas a proprio Superiore maiore, facultatem ad excipiendas confessiones ubique erga sodales instituti amittit presbyter; revocata autem eadem facultate ab alio Superiore competenti, eandem amittit erga solos in eiusdem dicione subditos.

§ 1. Neither the local Ordinary nor the competent Superior may, except for a grave reason, revoke the grant of a faculty habitually to hear confessions.

§ 2. If the faculty to hear confessions granted by the local Ordinary mentioned in can. 967 § 2 is revoked by that Ordinary, the priest loses the faculty everywhere. If the faculty is revoked by another local Ordinary, the priest loses it only in the territory of the Ordinary who revokes it.

§ 3. Any local Ordinary who has revoked a priest's faculty to hear confessions is to notify the Ordinary who is proper to that priest by reason of incardination or, if the priest is a member of a religious institute, his competent Superior.

§ 4. If the faculty to hear confessions is revoked by his own major Superior, the priest loses everywhere the faculty to hear the confessions of the members of the institute. But if the faculty is revoked by another competent Superior, the priest loses it only in respect of those subjects who are in that Superior's jurisdiction.

SOURCES: § 1: c. 880 § 1

CROSS REFERENCES: cc. 134 §§ 1 et 2, 184 § 1, 192, 220, 295, 368, 372 § 2, 427, 620, 622, 967 §§ 2 et 3, 968–969

COMMENTARY

Fernando Loza

Revocation of the faculty to hear confessions

1. *General principles*

a) *Revocation* of the penitential faculty is an administrative act by those who enjoy the power of governance, just like the concession of this faculty. Those who may grant it (cc. 967 §§ 2 and 3, 968–969), may also revoke it for a "grave reason."

The norm contemplates in § 1 the habitual faculty. For this reason, it is important to understand not only the faculty granted by concession (c. 969), but also the faculty granted by conferral of an office that brings the faculty to hear confessions with it (see commentary on c. 968), which is *natura sua* habitual.

b) It would be appropriate to ask if the faculty that is possessed *vi officii* is revocable, without the removal of the titular of that office, in other words, to prohibit not only the lawful exercise, but also to deprive him of the penitential faculty which is included in the office *durante officio*. The canon does not explicitly determine this, but it does establish the general principle that the habitual penitential faculty is revocable. It seems, therefore, that due to a "grave reason," the faculty that is possessed *vi officii* may be revoked without necessarily having to remove the officeholders from his office (e.g., the priest having a particular transitory psychological situation: scruples, depression, etc.). In such a case, or another similar or equivalent case, it may be appropriate or even necessary to deprive such a priest of the faculty to hear confessions, while keeping him in office, so that he may continue to exercise the other functions that are connected to the office. If the grave reason were of a different nature, the simplest and most direct—as well as obligatory, in such a case—would be the canonical removal from office (cc. 184 § 1 and 192).

2. *Reasons for revocation*

Since revocation is a grave and odious measure, the norm establishes that revocation should not occur "without a grave reason." Although the canon explicitly refers to the habitual faculty (§ 1), such requisite is applicable, as a juridical-pastoral criterion, to *every* penitential faculty.

Revocation should not be performed without a truly grave cause, for the following reasons:

a) all priests are ordained to the ministry and have—in principle—the right to exercise it, at least with respect to the faithful entrusted to them;

b) a revocation (the same as a denial) without a grave reason could illegitimately damage the good reputation of the priest, to which he—*iure naturae*—has a right (c. 220);

c) and, the community of faithful would be illegitimately deprived of the ministry of the priest.

3. *Effects of the revocation*

The normative provisions regarding the effects of the revocation follow the same principles—but in the opposite sense—as those established for universal extension, attainment, and concession. The scope in which the faculty is lost depends on those who revoked it. The canon distinguishes and determines them in §§ 2 and 4. In short:

a) *In the hierarchical circumscriptions*

— if it is revoked by the ordinary of the place in which they have a domicile or in the place of incardination (cc. 134 § 2, 368, 372 § 2, 427, 967 § 2): the faculty is lost *ubique*, everywhere (§ 2);

— if it is revoked by another local ordinary, different from two the previously mentioned: the faculty is only lost in the jurisdictional-territorial area of the ordinary who revokes it (§ 2);

b) *In ICL and SAL*

— if it is revoked by their own major superior (c. 620): it is lost "everywhere," over the specific faithful, determined in cc. 967 § 3, 968 § 2 and 969 § 2;

— if it is revoked by any other superior: it is lost strictly in the jurisdiction of said superior, but the universal extension over the rest of the faithful who are not under the jurisdiction of said superior, is not lost.

4. *Notification of the revocation*

a) In § 3, the norm prescribes that, when the revocation has been made by the local ordinary, he is to notify "the ordinary who is proper to that priest by reason of incardination," and if he is a member of a religious institute (or of a clerical SAL of pontifical right), he is to notify "his competent Superior." This norm exists so that the ordinary of incardination or

the competent superior may have reliable and official knowledge of the revocation and of its reasons, so that the resulting consequences may, with pastoral prudence and canonical coherence, take into account the reasons which caused such a grave measure to be taken by the revoking ordinary.

It should be noted that the norm orders that the religious priest's "competent Superior" be notified; it does not state that the religious priest's ordinary be notified, as not all religious priests have their own religious ordinary. It is sufficient, therefore, to notify the priest's immediate local superior of the revocation; although nothing prevents the notification of the priest's own ordinary, as well, if he has one (cc. 134 § 1 and 620).

b) Although the norm does not explicitly state it, it is clear that the decree of revocation is to be given to the priest in writing, for the same—and even more powerful reason—because the Code prescribes that the concession must be given in writing (c. 973). The priest from whom the habitual penitential faculty is revoked has the right to demand to be notified of such a decree in writing: this is an indispensable presupposition by which he may exercise his right to submit a possible recourse—based on documentation—by administrative means (cc. 1732–1739).

5. *Those who possess the faculty to hear confessions who are not included in this norm*

Because they possess *ipso iure* the faculty to hear confessions, Cardinals, bishops (c. 967 § 1) and their equivalents are not affected by this canon, and the faculty to hear confessions may only be revoked from them by the Roman Pontiff.

It is understood that, in the case of bishops—and equivalent ordinaries—another diocesan bishop can refuse the exercise of this faculty within his own jurisdiction (cf. c. 967 § 1 *in fine*).

975 **Praeterquam revocatione, facultas de qua in can. 967, § 2 cessat amissione officii vel excardinatione aut amissione domicilii.**

Apart from revocation, the faculty mentioned in can. 976 § 2 ceases by loss of office, by excardination, or by loss of domicile.

SOURCES: cc. 873 § 3, 967

CROSS REFERENCES: cc. 102–103, 106–107 § 1, 184, 192, 194, 267–268, 967 §§ 2 et 3, 968, 977

COMMENTARY

Fernando Loza

Other reasons for the loss of the faculty to hear confessions

This norm contemplates reasons *other* than revocation (c. 974) for which the penitential faculty would cease *ipso iure*: in its original sphere and, consequently, in its universal extension, in accordance with c. 967 § 2.

The principle of the canon is clear; the faculty ceases when the reasons which originated it cease: office, concession of the local ordinary where the priests are incardinated or the place in which they have a domicile.

a) *Loss of the office*, in any of its forms: by reason of resignation, transfer, removal or privation (cc. 184–196). When the title of the office that brings with it the penitential faculty is lost (see commentary on c. 968), this faculty ceases everywhere.

b) *Through excardination*: the faculty granted by the ordinary of incardination, and its legal scope (c. 967 § 2), automatically cease with the excardination of the priest, with respect to said ordinary (cc. 267–268).

c) *Through change of domicile*: domicile (cc. 102–103, 106–107 § 1) constitutes for all priests the sufficient legal condition for "… the local Ordinary … where they have a domicile" to grant them the habitual faculty (cc. 967 § 2 and 969 § 1), extended *ubique*. The consequence of the loss of domicile (due to *change)* is sanctioned in the following way: the faculty which was obtained due to a fact (*this* domicile) is automatically lost. When the faculty which originates from the domicile ceases, it ceases *ubique*.

The list of reasons found in the norm is not exhaustive; another case may be added, in which the penitential faculty *ceases*, or rather is revoked

ad casum ab ipso iure: the case which c. 977 contemplates, with respect to the absolution of an accomplice.

In the present canonical discipline, censures and other possible penalties (cc. 1331–1338) do not constitute reasons for which the penitential faculty is lost; since this is not a power of jurisdiction, those penalties do not affect the validity of its exercise, but only affect its lawfulness, in virtue of the express prohibition of the cited canons. With respect to the lawfulness, cf. cc. 1335–1336 and 1338 § 3.

976 Quilibet sacerdos, licet ad confessiones excipiendas facultate careat, quoslibet paenitentes in periculo mortis versantes valide et licite absolvit a quibusvis censuris et peccatis, etiamsi praesens sit sacerdos approbatus.

Any priest, even though he lacks the faculty to hear confessions, can validly absolve any penitents who are in danger of death, from any censures and sins, even if an approved priest is present.

SOURCES: c. 882

CROSS REFERENCES: cc. 96, 290, 843 § 1–844 §§ 2–4, 986 § 2, 965–966, 977, 1008, 1335, 1338 § 2, 1357 § 3, 1378 § 2,2, 1752

COMMENTARY

Fernando Loza

Faculty to hear confessions in danger of death

1. In the case of danger of death, the entire positive canonical system whose supreme law is "salus animarum" (c. 1752), concentrates on and dedicates itself to facilitating the salvation of the penitent. This is the *ratio* of the present norm, which, in danger of death, grants all priests absolute penitential faculty and the power of jurisdiction necessary to absolve, validly and lawfully, any penitent from any censures and sins.

The following are the terms and scope of the norm:

a) *Minister*: all priests; it is sufficient to have validly received the sacrament of orders; whatever the canonical status or situation: even if the faculty were not possessed, or the clerical state were lost, or suspension, interdiction or excommunication were being imposed; even not being a *Catholic* priest (cc. 843 § 1 and 844 §§ 2–4), but having been *validly* ordained.

b) *Circumstance*: the penitent in danger of death. It is to be noted that the norm does not state "in articulo mortis"; it does not require, therefore, that death be imminent (terminally ill, agonizing, dying): it is sufficient that there be a positive and probable danger of death (cf. c. 144), for any reason.

c) *Object-matter of the absolution*: "from any censures and sins," without any limitation or restriction; not even the sin of complicity (c. 977).

d) *Subject-addressee*: all penitents, whether Catholic or not, in accordance with the theological-canonical requirements stated as necessary in c. 844 §§ 2–4; which, respecting the penitents, will only be: validly received *baptism* (c. 96).

2. The final clause of the canon is very important: "even if an approved priest is present." The norm—in agreement with c. 991—guarantees absolute liberty of all penitents to choose a confessor, and to this confessor, complete validity and lawfulness of absolution. The unlawfulness and consequent penalties established in cc. 884 and 2367 of *CIC*/1917 regarding the absolution of a partner when *another* priest could absolve him are explicitly derogated. In the current discipline, the faculty of all priests, regarding all penitents and all sin and censure, is absolute and total: valid and lawful.

3. Of course, the general norm of *posterior recourse* must be taken into account, which is established in c. 1357 § 3; those who, in danger of death, were absolved of a declared or imposed censure, or one that were reserved to the Apostolic See: once recovered from illness (or the danger of death having disappeared, for other reasons), have the duty to appeal, in one month's time, to the competent superior or to a priest with the faculty to absolve these censures, in accordance with c. 1357 § 2 (see commentary).

977 **Absolutio complicis in peccato contra sextum Decalogi praeceptum invalida est, praeterquam in periculo mortis.**

The absolution of a partner in a sin against the sixth commandment of the Decalogue is invalid, except in danger of death.

SOURCES: cc. 882, 884, 2367

CROSS REFERENCES: cc. 10, 11, 15, 17, 844 § 3, 965, 966, 976, 986–988, 991, 1338 § 2, 1378 § 1, 1752

COMMENTARY

Fernando Loza

1. Invalid absolution of a partner in sin

1. The legislator restrictively sanctions that—except in danger of death: c. 976—: "The absolution of a partner in a sin against the sixth commandment of the Decalogue is invalid."[1]

It is not a question of a penal sanction against the partners or of a "reservation" of sins (which does not appear in the current canonic discipline). This norm constitutes an *invalidating* law as far as the attempted absolution and a law that incapacitates—*ad casum*—the priest (cc. 10, 11 and 15 § 1). It is the "a iure" revocation of the penitential faculty of said priest, over this penitent, and with respect to this sin.

The *ratio legis* is multiple: *a)* the sacrosanct respect and the peculiar juridical protection that this sacrament requires; *b)* the common ecclesiastical good; *c)* the spiritual good of the very subjects (priest-penitent). Therefore, the norm invalidates such absolution, and in the case of such an absolution, incapacitates the priest. If such an absolution were valid, this sacrament of salvation and sincere conversion (c. 987) could result in an opportunity to and danger of reiterating or prolonging certain situations of sin, which would be entirely despicable, and an abominable profanation of this sacrament.

1. The *CCEO* establishes an identical norm, c. 730.

2. *Subjects and object of the norm*

a) Priest: any Catholic priests (c. 11), who have been ordained validly.

b) Penitent: any Christian penitent, even those who are not Catholic (c. 844 §§ 3–4).

c) Sin: it exclusively affects the absolution of sin against the sixth precept of the Decalogue that has not already been pardoned; however, since the absolution is *indivisible*, if it is invalid in the case of this sin, in virtue of the law, then it is also invalid in the case of the rest of the sins which were mentioned in that confession, if such sin is still necessary matter (c. 988 § 1).

The sin must be serious and external: in word or in deed; committed at any time: even before the priest received sacred ordination.

d) Partners: the priest and the penitent must have been partners formally, in other words with immediate, mutual, voluntary and external consent and direct cooperation, in the sin represented in the norm.

3. *Offense and consequent penalty*

a) Canon 1378 § 1 sanctions anyone who—except in danger of death (c. 976)—attempts absolution of such partner: "incurs a *latae sententiae* excommunication reserved to the Apostolic See." This is the maximum penalty of the current canonical system; it reveals the gravity of a criminal act.

b) Subject of the offense: any priest who attempts absolution; not a priest who simulates the sacrament and only *feigns* absolution; nor a priest who only *hears* the confession. (For the offense and consequent penalty, see c. 1378 and commentary)

4. *"Obligatory" absolution*

Absolution of a partner "in periculo mortis" is not only valid and lawful (c. 976), but in virtue of c. 986 § 2 it may be classified as obligatory: because there is no other priest who may impart it, or because the penitent clearly requested it of *this* priest (c. 991).

978 **§ 1. Meminerit sacerdos in audiendis confessionibus se iudicis pariter et medici personam sustinere ac divinae iustitiae simul et misericordiae ministrum a Deo constitutum esse, ut honori divino et animarum saluti consulat.**

§ 2. Confessarius, utpote minister Ecclesiae, in administrando sacramento, doctrinae Magisterii et normis a competenti auctoritate latis fideliter adhaereat.

§ 1. In hearing confessions the priest is to remember that he is at once both judge and healer, and that he is constituted by God as a minister of both divine justice and divine mercy, so that he may contribute to the honour of God and the salvation of souls.

§ 2. In administering the sacrament, the confessor, as a minister of the Church, is to adhere faithfully to the teaching of the magisterium and to the norms laid down by the competent authority.

SOURCES: § 1: c. 888 § 1; *RP* 10 a, c
§ 2: *RP* 10a

CROSS REFERENCES: cc. 213, 279 § 1, 749–750, 752, 840–841, 843 § 1, 959, 965, 974 § 1, 979–981, 988, 991

COMMENTARY

Fernando Loza

Ministers of God and of the Church

This canon contemplates the particular ministry, and the specific manner in which it should be exercised as this sacrament requests.

Priests, as "servants of Christ and stewards of the mysteries of God" (1 Cor 4, 1), are the human instruments of divine forgiveness and administrators of salvific grace.

Although the formal tone of the norm is one of exhortative admonition, its intention is, in reality, normative: this canon reminds and advises as to the way this sacrament is to be administered.

1. *Minister of God*

The norm specifies the various aspect of the penitential ministry. Following the terminology of the moral doctrine and of canonical tradition: the priest acts as a) a judge, a minister of justice for the honor of God, and b) as a healer, a minister of divine mercy for the salvation of souls.

a) *As judge*: he must judge the gravity of the sins; the integrity of the confession; the disposition of the penitent. He must be the judge who condemns the sin and absolves the repentant sinner, keeping in mind the infinite majesty of God, who has been offended. He must also help the repentant sinner to develop an upright, sound, and certain conscience.

b) *As doctor*: inasmuch as any sin constitutes an illness of the soul, the confessor must diagnose this illness and detect its deepest roots and causes; propose a medicinal remedy, which is adequate for the penitent and for the sins; heal the wounds (consequences of the sin) in the soul; he must impose a satisfaction for the sins.

Pope John Paul II summarized it in this way: "Whether as a tribunal of mercy or a place of spiritual healing, under both aspects the sacrament requires a knowledge of the sinner's heart in order to be able to judge and absolve, to cure and heal" (*RP* 31, II).

2. *Minister of the Church*

a) The Church—by the foundational will of Christ—is the only innate administrator and depositary of the sacraments (cc. 840–841). The priest-minister of these sacraments acts "in persona Christi et *nomine Ecclesiae.*" The Church has transmitted the ministerial priesthood, and by the same means, the "penitential faculty" is received from the Church. Therefore, this canon explicitly establishes that in the ministerial exercise of this sacrament, the priest "is to adhere faithfully to the teaching of the magisterium and to the norms laid down by the competent authority" (§ 2).

Such requisite—newly and expressly established in this Code[1]—is a necessary requirement for he who is, and should act as, a minister of the Church.

b) This faithfulness to the magisterium and to Canon Law implies that the confessor must appropriate—and transmit, as judge and as doctor—everything that the Church teaches in its moral and dogmatic doctrine exactly as the magisterium proposes: not only the infallible-extraordinary (cc. 749–750), but also the ordinary (c. 752). Likewise, the

1. Cf. *Comm.* 10 (1978), p. 66.

confessor is required to carry out and transmit all that the law (universal and particular) determines, especially that which refers to the valid and lawful administration-reception of this sacrament (faculty, prohibitions, censures, etc.).

The confessor cannot offer subjective criteria, contrary to the doctrine and the law of the Church, because he does not act in his own name but with the power of Christ and of his Church. To do so would be to betray Christ—of whom he is a minister—and the Church—in whose name he acts—; also, it would cause scandal and severe damage to the faithful, who have the right (c. 213) to receive light and peace for their souls in this sacrament, not error, doubt, and confusion, nor anguish of conscience. The confessor would not be, therefore, a *good pastor*, but an unfaithful mercenary who "does not enter the sheepfold by the door … is a thief and a robber …; The thief comes only to steal and kill and destroy … because he is a hireling and cares nothing for the sheep" (Jn 10: 1.10–13).

These words from Pope John Paul II act as a commentary: "With this reminder of the doctrine and the law of the Church I wish to instill into everyone the lively sense of responsibility which must guide us when we deal with sacred things like the sacraments, which are not our property, or like consciences, which have a right not to be left in uncertainty and confusion. The sacraments and consciences, I repeat, are sacred, and both require that we serve them in truth" (*RP* 33).

c) Any confessor who does not faithfully abide by that which is determined and required in this norm (§ 2) will incur "in causa grave" the effect that—if it is proven to be so—the faculty to hear confessions could be revoked, in accordance with c. 974 § 1.

979 Sacerdos in quaestionibus ponendis cum prudentia et discretione procedat, attenta quidem condicione et aetate paenitentis, abstineatque a nomine complicis inquirendo.

In asking questions the priest is to act with prudence and discretion, taking into account the condition and age of the penitent, and he is to refrain from enquiring the name of a partner in sin.

SOURCES: c. 888 § 2; SCHO Instr. *Ecclesia numquam*, 16 maii 1943; *RP* 10a

CROSS REFERENCES: cc. 6 § 2, 17, 970, 978, 981, 984, 987–988 § 1

COMMENTARY

Fernando Loza

Necessary prudence in questioning

1. The function of the minister, as judge and doctor (c. 978), will frequently require the priest to question the penitent: to assist the penitent for the proper integrity of the confession (c. 988); to know the number, the type and the gravity of the sins; to offer the appropriate medicinal remedy; to detect the penitent's dispositions of repentance and sincere resolution not to sin again; to foster the penitent's interior conversion. For these reasons, at times it may be necessary to ask the penitent timely questions about what is confessed. Such ministerial function will be necessary or advisable on many occasions, but asking the right questions—knowing the right way to pose them—is always a sensitive matter, especially regarding certain subjects and certain types of penitents. These reasons constitute the *ratio legis* of this canon.

2. The norm is necessarily generic in its statements, but very *concrete* in its precept and prohibition: taking into account the condition and age of the penitent, "the priest is to act with prudence and discretion" when questioning the penitent and "he is to refrain from inquiring the name of a partner in sin." The legislator has not wished to specify any more, since this matter preferably belongs to the scope of the pastoral and moral doctrine.

3. In light of "canonical tradition" (c. 6 § 2), and "the purpose and circumstances of the law, and the mind of the legislator" (c. 17), it seems appropriate to refer to the Instruction of the SCHO, in reference to questions

on the virtue of chastity,[1] in order to better capture the meaning of this norm and guide its proper fulfillment. The criteria and norms of prudence—human and supernatural—that it offers constitute a great experience that pertains to wisdom. We present here some of the more relevant sections of this Instruction:

"It is important to keep in mind the danger that exists if the confessor does not behave as considerately and with such circumspection that the matter requires and that is suitable to the dignity of the sacrament, at the moment of questioning and instructing the penitent about the sixth commandment. This goes beyond the requirement of the duty to be vigilant for the integrity of the confession and for the good of the penitent. It is equally important to remember the danger that exists if all of the confessor's behavior, especially with women, lacks the seriousness and sanctity due to the sacrament. All this would easily offend the faithful, would give cause for suspicion and could be the beginning of the profanation of the sacrament.

"... Those questions that are not necessary to sustain the penitent's confession regarding the number and kind of sins or to know the dispositions of the soul are useless. (...) Therefore, the following type of questions must be omitted, for they are useless, bothersome, and in this matter, dangerous: those questions regarding the sins about which the penitent has no positive and steady suspicion; questions regarding the kinds of sins that are unlikely to have been incurred by the penitent; questions about material sins, unless the good of the penitent or the necessity to avoid the danger of a common evil requires or advises a warning or correction. The same is true for morally indifferent circumstances, mainly regarding the way in which the sin was committed. If the penitent spontaneously, due to ignorance, scruples or malice, goes too far while explaining sins of lust or temptations, or abuses modesty in speech, the confessor should prevent such excess prudently, quickly and energetically.

"Furthermore, the confessor must keep in mind that the divine precept of the integrity of the confession does not apply if it entails serious damage to the confessor or the penitent, if this damage is extrinsic to the confession. Therefore, whenever it is feared that the questions will cause a scandal for the penitent or damage to the confessor, they must be omitted. When in doubt, always keep in mind this common piece of advice from doctors: in this matter, it is better to fall short than, in danger of sin, to go too far.

"(...) The confessor must not presume, of his own initiative or at the request of the penitent, to give guidance on the nature of or manner of the act by which life is transmitted; this matter is not flexible and does not yield to any pretext ... The confessor must always proceed with utmost

1. X. OCHOA, *LE* 2 (Rome 1969), pp. 2174–2176 (it was not published in *AAS*).

caution, especially with women penitents, carefully avoiding anything that implies familiarity or that may foster a dangerous friendship ... He should not allow confessions with women to last longer than necessary. He must refrain from discussing during a confession matters that are not of conscience. He should not visit them nor be visited by them nor have epistolary correspondence with them without a true need, nor should he permit long conversations in the sacristies, atriums or locutoriums, nor in any other place, even under the pretext of spiritual guidance.

"The confessor must carefully avoid introducing or fostering human affection in his own spirit or in the spirit of the penitent, under the guise of pity. To the contrary, he must strive so that everything he does while performing his sacred duty is done according to the word of God, guided by the spirit of faith."

4. The restrictive prohibition of "enquiring the name of a partner in sin" is absolutely established in the canon; in other words, it extends to *all* complicity of *any* kind of sin.

As well as being prohibited by the norm, an inquiry as to the name of a partner would be the result of useless and out of place curiosity; but, above all, it would constitute serious imprudence, unbecoming of the minister and offensive to the intimacy of the penitent.

However, the condition or state of the accomplice (family, married, priest, consecrated person, etc.) should be revealed if such circumstances affect the kind and seriousness of the sin. Therefore, the confessor may ask about *these* circumstances of the person, but may never ask the name of the accomplice.

980 **Si confessario dubium non est de paenitentis dispositione et hic absolutionem petat, absolutio ne denegetur nec differatur.**

If the confessor is in no doubt about the penitent's disposition and the penitent asks for absolution, it is not to be denied or deferred.

SOURCES: c. 886

CROSS REFERENCES: cc. 213, 841, 843 § 1, 959, 970, 978–979, 981, 987–988, 991

COMMENTARY

Fernando Loza

Absolution

1. Any penitent who is disposed (cc. 987–988)—and who lacks any penal impediment—has the right to receive absolution (cc. 213, 841 and 843 § 1) from a confessor who lawfully possesses the faculty. However, it is that confessor's responsibility, as sacramental *judge* (c. 978), to evaluate, with due pastoral-canonical prudence, if the penitent is truly disposed to receive absolution, both validly and licitly.

2. The tone of the norm makes it clear that absolution may be imparted, postponed, or refused. The canon wishes to avoid excessive rigor and severity on the part of the confessor. In principle, imparted absolution would be the rule, and postponing or refusing it would be the exception. In any of these options, the confessor must guide himself by the principles of the sound moral theology and of canon law, the knowledge of which is necessary and inexcusable, in accordance with c. 970.

3. The confessor is the guarantor and is responsible for the validity-liciety of this sacrament. But this is never as a function of his own subjective criteria and ideas, but as a minister of God ("of both divine justice and divine mercy": c. 978) and as a minister of the Church (in accordance with its teachings and its norms: c. 978 § 2).

A good general criterion is that which was offered by the illustrious Vermeersch: "paenitenti disposito absolutio danda est; neganda est indisposito; dubie disposito differenda."[1]

1. A. VERMEERSCH, *Theologiae moralis Principia-Responsa-Consilia*, III (Rome 1937), p. 440.

4. The confessor must always attempt to duly prepare the penitent before postponing or refusing absolution: the "salus animarum" is at stake (regarding the dispositions required of the penitent, see commentary on cc. 987–988).

In case of positive and serious doubt regarding the required dispositions, the confessor should not impart absolution: he should postpone it or, if necessary, refuse it.

Notice, however, that the refusal of absolution is an extreme and odious measure, which should only be taken for certain and serious reasons. And even in these cases, absolution must be refused in an especially charitable and delicate way, so as not to "traumatize" the penitent. The penitent should see that this disposition is the only thing that prevents absolution being granted.

It would almost always be more appropriate and pastoral to postpone absolution, encouraging the penitent to go back to the sacrament and, meanwhile, to ask God for light and grace to be duly disposed.

5. Absolution is an essential part of the sacrament of penance: "*at this moment* the contrite and converted sinner comes into contact with the power and mercy of God. It is the moment at which, in response to the penitent, the Holy Trinity becomes present in order to blot out sin and restore innocence. And the saving power of the Passion, Death and Resurrection of Jesus is also imparted to the penitent as the 'mercy stronger than sin and offense', as I defined it in my encyclical *Dives in misericordia*. God is always the one who is principally offended by sin—'Tibi soli peccavi!'—and God alone can forgive. Hence the absolution that the priest, the minister of forgiveness, though himself a sinner, grants to the penitent is the effective sign of the intervention of the Father in every absolution and the sign of the 'resurrection' from "spiritual death" which is renewed each time that the sacrament of penance is administered. Only faith can give us certainty that at that moment every sin is forgiven and blotted out by the mysterious intervention of the Savior" (*RP* 31, III).

981 **Pro qualitate et numero peccatorum, habita tamen ratione paenitentis condicionis, salutares et convenientes satisfactiones confessarius iniungat; quas paenitens per se ipse implendi obligatione tenetur.**

The confessor is to impose salutary and appropriate penances, in proportion to the kind and number of sins confessed, taking into account, however, the condition of the penitent. The penitent is bound personally to fulfil these penances.

SOURCES: c. 887; PAULUS PP. VI, Ap. Const. *Indulgentiarum doctrina*, 1 ian. 1967, 2–3 (*AAS* 59 [1967] 6–8); *RP* 6 c

CROSS REFERENCES: cc. 959–960, 978, 987–988, 991

COMMENTARY

Fernando Loza

Sacramental satisfaction

I. Doctrinal principles

Satisfaction, one of the acts of the penitent, forms an *integral part* of this sacrament. It responds to one of the effects of sin: the "necessity to undergo punishment for sin" or deserved punishment. Absolution entirely forgives "guilt of sin" as well as the eternal penalty. As part of *temporal penalties*, however, the penitent may still pay it off or at least diminish it, especially with the fulfillment of the *penitential satisfaction.* The peculiar remissive efficiency of said satisfaction is a direct result of being an integral part of the sacrament: for this reason it reaches a certain "ex opere operato" virtuality.

This doctrine on satisfaction, its need and its fruits were solemnly declared by the Council of Trent[1]: "sancta Synodus declarat, falsum omnino esse et a verbo Dei alienum, culpam a Domino nunquam remitti, quin universa etiam poena condonetur … Et divinam clementiam decet, ne ita nobis absque ulla satisfactione peccata dimittantur … Procul dubio

1. *Sess.* XIV, ch. 8 and cc. 12–15: Dz. Sch. 1689–1690; 1692–1693; 1712–1715.

enim magnopere a peccato revocant, et quasi freno quodam coercent hae satisfactoriae poenae, cautioresque et vigilantiores in futurum poenitentes efficiunt; medentur quoque peccatorum reliquiis, et vitiosos habitus male vivendo comparatos contrariis virtutum actionibus tollunt ... Accedit ad haec, quod, dum satisfaciendo patimur pro peccatis, Christo Iesu, qui pro peccatis nostris satisfecit" (Dz.-Sch., 1689–1690).

Pope John Paul II teaches: "Satisfaction is the final act which crowns the sacramental sign of Penance ... What is the meaning of this *satisfaction* that one makes or the *penance* that one performs? Certainly it is not a price that one pays for the sin absolved and for the forgiveness obtained: no human price can match what is obtained, which is the fruit of Christ's precious blood. The acts of satisfaction ... are the sign of the *personal commitment* that the Christian has made to God in the sacrament to begin a new life ... They include the idea that the pardoned sinner is able to join one's own physical and spiritual mortification—which has been sought after or at least accepted—to the Passion of Jesus, who has obtained forgiveness for the sinner. They remind us that even after absolution there remains in the Christian a dark area due to the wound of sin, to the imperfection of love in repentance, to the weakening of the spiritual faculties. It is an area in which there still operates an infectious source of sin which must always be fought with mortification and penance. This is the meaning of the humble but sincere act of satisfaction" (*RP* 31, III)

II. Normative principles

The canon establishes three principles: two regarding the confessor and one regarding the penitent:

a) *the confessor*: "is to impose salutary and appropriate penance" (for the spiritual health of the penitent); and such penance must be proportional to "the kind and number of sins confessed, taking into account, however, the condition of the penitent";

b) *the penitent*: "is bound personally to fulfil" these penance.

a) *Proportional satisfaction*

The most important and delicate aspect of this norm is to be certain of the suitability, proportional to the satisfaction, of the specific sin-penitent relationship. The canon does not establish severe rigorism, but it does determine the fundamental criterion of suitability. Perhaps this norm presently requires more attention and more exact compliance: it has become "softer" and has mitigated satisfaction so much, that it runs the risk of becoming something routine, a formality.

The Council of Trent has already detected such possible corruption, with the following grave warning: "Debent ergo sacerdotes Domini, quantum spiritus et prudentia suggesserit, pro qualitate criminum et poenitentium facultate, salutares et convenientes satisfactiones iniungere, ne, si forte peccatis conniveant et indulgentius cum poenitentibus agant, levissima quaedam opera pro gravissimis delictis iniungendo, alienorum peccatorum participes efficiantur (1 Tim. 5, 22). Habeant autem prae oculis, ut satisfactio, quam imponunt, non sit tantum ad novae vitae custodiam et infirmitatis medicamentum, sed etiam ad praeteritorum peccatorum vindictam et castigationem" (Dz.-Sch., 1692).

This grave warning from the supreme magisterium is permanently and currently in effect, and the reasons it alleges are always valid in their doctrinal, normative and pastoral aspects. In this way, Pope John Paul II insists and determines the following: "Acts of satisfaction—which, while remaining simple and humble, should be made to express more clearly all that they signify... should not be reduced to mere formulas to be recited, but should consist of acts of worship, charity, mercy or reparation" (*RP* 31, III).

In short, the appropriate and suitable imposed satisfaction can and should contribute to the recuperation, in Christ's faithful, of the sense of graveness of sin as an offense to God, and of the need to generously make reparation for said offense. The *divine precept of doing penance* must never be forgotten (cf. Mt 3, 8; Lc 3, 8 and 13, 3; Apc 2, 5).

As an illustrious canonist justly notes: "tante volte si deve imporre una penitenza leggera per le condizioni del penitente. Tuttavia non si deve essere tropo facili a imporre sempre penitenze leggere. È un danno che si può recare allo stesso penitente, all'onore di Dio e alla disciplina della chiesa."[2]

b) *Fulfillment of satisfaction*

The sincere *acceptance*, by the penitent, of the imposed satisfaction is an *essential* part of this sacrament (cf. Dz.-Sch., 1689–1690), and is a necessary requirement of the due dispositions of the penitent (cf. cc. 959, 987). The *fulfillment* of such satisfaction is only the *integrating* part: the "sacramental" obligation imposed and accepted, "that the penitent is bound personally to fulfill." No one can do it for anyone else; and one must always fulfill it personally, unless a physical or moral impossibility excuses one from such obligation. But *not fulfilling* the satisfaction will not affect the validity of the already received absolution; although such culpable lack of fulfillment would imply posterior sin, proportional to the graveness of the imposed satisfaction.

2. V. DE PAOLIS, "Il Sacramento della Penitenza," in *I Sacramenti della Chiesa* (Bologna 1989), pp. 218–219.

The *commutation* of penance can be done for a just and reasonable cause, not by the penitent by one's own judgment, but by the minister of the sacrament. Alonso[3] expressed it in this way: "*The same confessor* who imposed penance may change it for another easier one, inside the confession or outside it. If it is a question of *a different confessor* than the one who imposed it, then one must only proceed to the commutation in the tribunal of penance after receiving a general report on the reason that served as motive for the imposition of that specific penance."

3. A. ALONSO, *Comentarios al Código de Derecho Canónico*, III (Salamanca 1963), p. 302, note 66.

982 **Qui confitetur se falso confessarium innocentem apud auctoritatem ecclesiasticam denuntiasse de crimine sollicitationis ad peccatum contra sextum Decalogi praeceptum, ne absolvatur nisi prius falsam denuntiationem formaliter retractaverit et paratus sit ad damna, si quae habeantur, reparanda.**

A person who confesses to having falsely denounced to ecclesiastical authority a confessor innocent of the crime of solicitation to a sin against the sixth commandment of the Decalogue, is not to be absolved unless that person has first formally withdrawn the false denunciation and is prepared to make good whatever harm may have been done.

SOURCES: c. 894

CROSS REFERENCES: c. 17, 980, 987, 1331 § 1,2, 1332, 1355, 1387, 1390

COMMENTARY

Fernando Loza

1. *Absolution from "false denunciation"*

This norm contemplates a singularly grave sin: falsely denouncing an innocent confessor of "solicitation" (cf. c. 1387), before the ecclesiastical authority; the canon determines the requirements for the *licit* absolution of the sin.

Such slanderous denunciation may also constitute a *crime*, penalized by "interdict *latae sententiae*," in accordance with cc. 1390 § 1 and 1332 (see their respective commentaries). However, the presently discussed norm directly contemplates only the sacramental absolution of such sin, regardless of whether the penitent incurred in the described crime or not. When a criminal act has been committed, the requirements for absolution are, *in addition to* those established in this canon, those pertaining to the previous remission of the corresponding censure.

It is not a question of a "reserve" of sin: in the old discipline this was the only sin reserved "ratione sui" for the Holy See (c. 894 *CIC*/1917). In the current discipline, the "reservation" of sins has been abolished.

2. *Characteristics of this sin*

All people have the right to a good reputation (cf. c. 220). One who illegitimately causes grave harm to the reputation of another person, commits a grave sin. Absolution for this requires not only repentance, but also the sincere and real will to make good whatever harm may have been done (retracting the slander, making reparation for the scandal, etc.). This requirement is part of the disposition necessary of such a penitent to receive absolution validly (cf. c. 987). Normally, a grave promise from the penitent, sincerely manifested, is enough to grant the person absolution. But this canon contemplates a specific supposition of special gravity and consequences: the false denunciation of an innocent priest of "solicitation." For this reason, the norm establishes more rigorous and specific requirements for absolution of the offender regarding this slanderous denunciation. The sin that the canon contemplates is:

a) false denunciation: lacking a true basis, slanderous;

b) of "solicitation": in accordance with c. 1387;

c) "before the ecclesiastical authority": Ordinaries, ecclesiastical tribunals, Holy See. It has to be a strict denunciation, not a mere consultation with such authorities about a possible or doubtful solicitation; nor defamation or slander before other people—even ecclesiastical authorities—that did not constitute a formal denunciation;

d) against a priest who is innocent of such solicitation: although the canon states "confessor," we believe that this canon should not be interpreted strictly in accordance with the literal legal text, because: *a*) this is not in the penal sphere (c. 18); *b*) it is a question of false denunciation, which, being slanderous, may equally affect the "confessor" or any other priest who lacks the faculty to hear confessions. Therefore, c. 17 must be applied, regarding the purpose and the circumstances of the law and the mind of the legislator. The sin is the same and the ecclesiastical and personal consequences of such falsehood are almost identical: an innocent priest is gravely denounced. Hence, the criteria and requirements for the absolution of the sin must be identical for any innocent and falsely denounced priest.

3. *Requirements for licit absolution*

The norm stipulates two requisites necessary to absolve this sin:

a) *Previous formal retraction* of the false denunciation: the canon prescribes that retraction is an indispensable and previous condition to absolution, and must occur before absolution may be received. In this way, the norm guarantees that the obligatory retraction will occur as soon as possible. This is necessary because of the grave risk that the falsely

denounced priest runs, and to prevent the penitent—if one were absolved without first having given the retraction—from not fulfilling the promise to retract or from delaying retraction, which would result in grave harm to the innocent priest. This requisite is so important that, in light of the "ratio legis," if a penitent in danger of death (c. 976) or in an "urgent case" (c. 1357 § 1) were absolved without the possibility of retraction before the ecclesiastical authority, the confessor must do everything in his power that *retraction* be made (for example, in writing and with a signature or before two witnesses). The intention of this requirement is that authentic proof of this retraction will remain in the external forum, with the explicit promise that the penitent will retract the denunciation (if and when this is possible) before the competent ecclesiastical authority.

The canon states "formaliter retractaverit": with this expression, the norm requires not external formalities, but a true and explicit retraction, authentic in the external forum, which formally annuls the previous false denunciation and restores the good reputation of the denounced.

The canon does not explicitly indicate the specific authority before which the retraction should be performed, but by requiring it to be "formaliter,"[1] the canon sufficiently determines that it should be before the *same* authority that received the false denunciation. If this is impossible (due to great distance or other causes), it would be sufficient to retract the denunciation before a competent "ecclesiastical authority," who would give immediate recourse of the retraction to the authority before which the denunciation was presented. We believe that in this way the previous requisite of the canon would be fulfilled.

b) A *Will disposed toward making reparation for the damage.* The norm stipulates another requirement: the penitent's sincere disposition to make reparation for any damage that could have been caused (to the priest and others). However, it does not require the penitent to make the reparation previous to absolution (as was required of the retraction): it is sufficient that the penitent, advised of this grave obligation by the confessor, manifests a good disposition and promises to make the reparation.

When lacking one of the two requisites, the confessor should not grant absolution, but postpone it until the penitent has made the retraction and is disposed to make reparation for the damages.

4. *A case of "invalid" absolution*

A person who, due to a "false denunciation," has also incurred an interdict, in accordance with cc. 1390 § 1 and 1332, and anyone who consciously and maliciously hides the censure which one has incurred from

1. Cf. *Comm.* 10 (1978), p. 65.

the confessor at the moment of confessing one's sin, will not receive absolution validly. This is not because the penalty annuls its validity (it only sanctions prohibition) but due to the lack of the required dispositions: sincere repentance and interior conversion (c. 987). On the contrary, if the penitent were to act in good faith, then the absolution would be entirely valid, with respect to the censure and the sin.

983 **§ 1. Sacramentale sigillum inviolabile est; quare nefas est confessario verbis vel alio quovis et quavis modo de causa aliquatenus prodere paenitentem.**

§ 2. Obligatione secretum servandi tenentur quoque interpres, si detur, necnon omnes alii ad quos ex confessione notitia peccatorum quoquo modo pervenerit.

§ 1. The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion.

§ 2. An interpreter, if there is one, is also obliged to observe this secret, as are others who in any way whatever come to a knowledge of sins from a confession.

SOURCES: § 1: c. 889; *RP* 10d

CROSS REFERENCES: cc. 29–30, 220, 960, 965, 978, 984, 990–991, 1324, 1349, 1354 § 3, 1357, 1388 § § 1 et 2, 1550 § 2,2°

COMMENTARY

Fernando Loza

I. THE SACRAMENTAL SEAL (§ 1)

1. *Nature of and reason for the seal*

The legislator formulates and determines in this norm a very grave obligation *de iure divino*: the absolute, permanent and inviolable secret (*sigillum*) that the confessor must keep forever regarding all the sins that the penitent confesses to him. Saint Thomas states that the seal "nihil aliud est quam debitum confessionem celandi" (*Supl.*, q. 11, a. 3, ad resp.). The sacramental seal should never be violated by the minister of this sacrament for any reason, even at the risk of losing his own life.

Such obligation is unmistakably bound to and implicit in the institution of this sacrament (Jn 20:22–23). This is how it is understood and taught by the Magisterium and by the unanimous theological-canonical doctrine.[1]

1. Cf. ST. LEO THE GREAT, Let. *Magna indignatione*, March 6, 459 (Dz.Sch. 323); LATERAN COUNCIL IV, c. 21 (Dz.Sch. 814); ST. THOMAS, *Supl.*, q. 11, arts. 1–4; CONC. TRID., *Sess.* XIV, c. 1 (Dz.Sch. 1668); c. 5 (Dz.Sch. 1679, 1683); c. 6 (Dz.Sch. 1706).

2. *Ratio legis*

The *ratio legis* of this norm (§ 1) is multiple: *a*) natural Law, which prohibits illegitimately defaming anyone or betraying the personal intimacy manifested by another (c. 220); *b*) the quasi-contract established, tacitly but unmistakably, between the confessor and the penitent, by the act of the former confessing one's own sins to the latter, with the evident implicit condition that these must remain permanently and totally secret; *c*) positive divine law: given that Christ instituted this sacrament and its necessity for the health of the soul and the spiritual good of the penitent (Dz.-Sch., 1668, 1679, 1683, 1706). But this sacrament would be entirely hateful and abhorrent for the faithful if the confessed sins were ever revealed; *d*) ecclesiastical positive law, which determines and sanctions in this canon that which is dictated by divine law—natural and positive—in order to safeguard absolutely the "sacramental seal," without any possible exception.

3. *Dogmatic foundation*

In this sacrament, the priest acts (hears, knows, judges and absolves) as a minister of God "in persona Christi." Everything that is confessed to him during a confession is confessed to God, and must remain sealed (*sigillum*) forever—irreversibly and irrevocably—in the *divine forum.*

De Paolis expresses it with vigor and precision in this way,: "Quod auditur in foro Dei semper manere debet in foro Dei. Nunquam dari potest ratio quamvis gravissima quae permitat manifestationem in foro humano peccatorum quae paenitens confessus fuerit Deo in foro sacramentali. Agitur ergo de 'sigillo inviolabili'. Non agitur de lege humana ecclesiastica, sed divina. Non potest ergo dispensari."[2]

Saint Thomas, regarding the dogmatic foundation of the sacramental seal, audaciously expresses the following: the priest "non scit ea ut homo sed ut Deus" (*Supl.*, q. 11, a. 3, ad 2); "ipsa occultatio est de essentia sacramenti, in quantum scit illud ut Deus, cuius vicem gerit ad confessionem" (*Supl.*, q. 11, a. 4, ad resp.).

2. V. DE PAOLIS, "De delictis contra sanctitatem sacramenti paenitentiae," in *Periodica*, 79 (1990), p. 191.

4. *Violation of the seal is an offense of the highest gravity*

In the *CIC*/1917, c. 889 stated: "caveat diligenter confessarius…" In this Code, the legislator describes the violation of the seal with a new term that has a uniquely intense meaning: "nefas est confessario…" "Nefas" has a peculiar meaning in the religious-juridical area of our culture: impious, sacrilege, execrable, against everything human and divine, something of supreme iniquity. Some vernacular versions do not sufficiently express the degree of great gravity which "nefas" from the Latin original implies: *nefando*.

The violation of the seal can be: *a*) *direct*: when the confessed sin and the person of the penitent is unmistakably revealed, connecting the person to the offense;" *b*) *indirect*: when there is no copulative nor expressly clear revelation of the sin or of the penitent or the connecting of the two.

Such distinction is relevant in the penal sphere (c. 1388 § 1); but it is irrelevant regarding that which is sanctioned by this norm: "nefas est confessario… aliquatenus prodere paenitentem." Any violation of the seal—direct or indirect—is wholly prohibited and is heinous.

5. *Subject of the seal*

According to the norm (§ 1), the only subject obligated to the "sacramental seal," is the "confessor." But any priest who hears confessions without possessing the faculty—at least supplied (c. 144 § 2)—also remains bound, *ex iure divino*, to the same seal: due to his priestly condition. He would also remain bound *ex iure positivo* to the penitential secret, in accordance with § 2 of this canon (see *infra*, II); although penal law sanctions the crime of the "confessor" and that of "other" subjects in different ways (see c. 1388 and commentary).

6. *Matter of the seal*

Paragraph 1 unmistakably prohibits and judges as absolutely wrong *any violation* of the sacramental seal, whether direct or indirect. The norm precisely states: "aliquatenus prodere paenitentem," in other words, anything that implies betrayal of the penitent as such: everything that the penitent has confessed regarding sins committed. The Spanish version omitted the translation of this very important adverb: "aliquatenus." It is expressed, however, in other translations: for example, the Italian translation: "tradire in qualcosa"; the French translation: "trahir en quoi que ce soit." This adverb "aliquatenus" includes everything that is a matter proper to the seal.

Saint Thomas determines exactly what that matter is: "sigillum confessionis directe non se extendit nisi ad illa de quibus est sacramentalis confessio. Sed indirecte id quod non cadit sub sacramentali confessione, etiam ad sigillum confessionis pertinet: sicut illa per quae posset peccator vel peccatum deprehendi" (*Supl.*, q. 11, a. 2, ad resp.). Therefore, everything that directly or indirectly may "aliquatenus prodere paenitentem" belongs to the unviolable matter of the seal.

The theological-canonical doctrine[3] distinguishes: *a*) the *essential* matter of the seal: be it direct-primary, or indirect-secondary. Both are essential matters; *b*) the *improper-accidental* matter: that which does not have a direct nor indirect relation to the confessed sins, for example, physical or psychological defects of the penitent, the way in which the penitent behaves in the confessional, the economical situation of the penitent, the opinions of the penitent, etc.

Nothing that is considered part of the accidental-improper matter would fall under the strict seal, but it would fall under the definite prohibition of c. 984.

In short, the following are considered the *essential matter* (direct or indirect) of, and are an *inviolable* part of the sacramental seal:

— any grave sin, confessed even "in genere," known only from confession;

— venial sins, concretely and specifically confessed, known only from confession;

— denial of absolution: the seal obligates "ex confessione," because it was heard, even if absolution is not granted;

— grave imposed penitence: this would be an implicit revelation of the grave sin confessed;

— the circumstances confessed about the penitent and about the sins (for example, the time, the place, the way, the condition of the penitent or of the partner), that identify the sin and/or the penitent "aliquatenus": directly or indirectly;

— sins of other people that the penitent—eventually, spontaneously or even illegitimately—might have revealed in the confession; for example, the partner (cf. c. 979).

Violation of the sacramental seal never admits "smallness of matter," due to the aforementioned *ratio legis* of this norm, and because it is always a very grave obligation of the "virtue of the religion." Nor is it lawful to apply any type of "probabilism" to the obligation of the sacramental

3. Cf. D.M. Prümmer, *Manuale Theologiae Moralis*, III (Rome 1958), pp. 316–317, no. 444; F. Capello, *De Sacramentis*, II (Rome 1963), nos. 599–611.

seal, for example, applying the "dubium iuris" (doubtful matter of the seal), or the "dubium facti" (doubtful knowledge "ex confessione").[4]

Although it would not be considered a violation of the seal, the confessor should *not* speak with the penitent about the sins that the latter confessed to the former; unless it is the penitent who wishes to speak about them. All this is required, in light of obligated pastoral prudence, respect for the sacrament and for the penitent.

7. *Authorization of the penitent in order to break the seal*

The sacramental seal, absolutely inviolable in itself, may only cease due to explicit permission or authorization by the penitent to the minister to break it.

Saint Thomas explains it in this way: "the penitent may allow that which the priest knew as a minister of God, to be known to him also as a man. One allows this when one gives the priest permission to make it public; from this point, if the priest speaks, he does so without breaking the seal of the confession. He should, however, avoid any scandal, so as to not be considered a violator of the seal" (*Supl.*, q. 11, a. 4, ad resp.).

As it is a most sensitive matter, the confessor who is authorized to reveal what was heard in confession, should require the penitent to repeat such authorization outside of the sacrament, or at least genuinely attempt to attain proof of the conceded authorization, out of respect for the holiness of the sacrament, in order to avoid any scandal and to safeguard the innocence of the minister.

8. *The offense of violating the seal*

Violation of the sacramental seal by the "confessor" is typified as an offense in c. 1388 § 1. Direct violation is penalized with "excommunication *latae sententiae* reserved to the Apostolic See." Indirect violation should be punished ("puniatur") with penalties that are undetermined, gradual and proportionate "to the gravity of the offence" (see c. 1388 and commentary).

4. E.F. REGATILLO, *Institutiones Iuris Canonici*, II (Santander 1956), p. 598.

II. THE PENITENTIAL SECRET (§ 2)

The Code (more precisely than c. 889 § 2 *CIC*/1917) reserves the term "sacramental seal" exclusively to refer to the obligation of the minister of penance. The obligation of "other" subjects (different from the confessor) is called: "secret": "Quia solus sacerdos est minister huius sacramenti et eius obligatio ad secretum maius est."[5]

We call it "penitential secret" because the origin and foundation of the obligation is precisely the knowledge of the confession in the sacrament of penance.

In accordance with this norm, any "other" subjects who "in any way whatever" have knowledge of the sins confessed, also remain obligated to keep such knowledge an absolute secret.

1. *Nature and purpose of the obligation*

This obligation is always most grave, and is derived from the following:

— *ex iure naturali*: for exactly the same reason as that of the strict seal, in accordance with c. 220;

— *ex virtute religionis*: which always requires all the faithful to have great respect and veneration for this sacrament, and absolutely prohibits any sacrilegious profanation of the sacrament;

— *ex iure positivo*: due to this norm, which determines and definitively sanctions that which natural law dictates.

In light of the virtue of religion and of positive law, it becomes important to mention the two explicit motives which the general Decree of CDF[6] cites: "protect the sanctity of the Sacrament of Penance and defend the rights of the Minister of this Sacrament and all Christ's faithful in all that concerns the sacramental seal and any other secrets related to confession."

The explicit *ratio* of this Decree is double: the guardianship of the sanctity of the sacrament, and the protection of the rights of the faithful (confessor and penitent). Both would be gravely violated with the recording and divulgence that this Decree typifies, as will be mentioned later.

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5. *Comm.* 10 (1988), p. 67.

6. *AAS* 80 (1988), p. 1367. According to the text: "This Decree enters into force on the very day of its promulgation." But since the Decree was not dated, this would be—according to c. 8 §1—the date of the fascicle of *AAS*: November 23, 1988.

2. *Subjects of the penitential secret*

All those—and specifically "the interpreter" (c. 990)—who have "knowledge of the sins from the confession." Such knowledge may have been acquired in any way or from any medium: from themselves (involuntarily or maliciously), or from other people (for example, due to the violation of the strict seal, or by the revelation of the penitential secret by a third party). The cognitive link between the news of the sins and the origin of such knowledge "ex confessione" is always required.

3. *Matter of the penitential secret*

This is the same as the matter of the seal, as was specified in section I, 6 of this commentary. Although the reason and gravity of the seal is different and greater, the object-matter of the secret is identical.

4. *Offense of violating the secret*

The violation of the "penitential secret" is typified as an offense in c. 1388 § 2. The subject of the offense is any person, different from the confessor (as a confessor and as obligated to observe the sacramental seal). The annexed penalty is *ferendae sententiae* preceptive ("puniantur"), although undetermined; however, it may lead to the maximum censure of "excommunication."

With respect to this offense, and subsequently, to the Code, the CDF promulgated the cited General Decree: that, "in virtue of the special faculty, conceded by the Supreme Authority of the Church (c. 30)," it really promulgates a new penal norm.[7]

This Decree establishes that: "anyone who records, using any technical instrument, or who divulges, through any means of social communication, that which is said by the confessor or by the penitent in the Sacrament of Confession, whether it be true or false, learned by one's own means or from a third party, will incur an excommunication *latae sententiae.*"

The Decree sanctions two ways—different and autonomous ("*aut*")—of violating the "penitential secret": the mere recording, by use of technical instruments, carried out by the penitent or by the confessor (whether these be true or false), or by a third party; and the divulgence of that which is discovered "through any means of social communication."

7. We refer to a commentary of notable interpretive finesse regarding this General Decree: A. MARZOA, "Protección penal del Sacramento de la Penitencia y de los derechos de los fieles," in *Ius Canonicum* 30 (1990), pp. 165–172.

Independent of the efficacy and power of the Decree in the strictly penal sphere (subjects, material executors, partners in recording or in divulgence[8]: see commentary on c. 1388), an important point must be emphasized: the supposition that this Decree contemplates, declares and sanctions are two typified ways of violating the "penitential secret."

In virtue of this Decree, the matter of the "penitential secret"—which the canon circumscribes to "sins" in § 2—explicitly applies to the recording and divulgence of "what the confessor or the penitent say." Such application is of great importance in protecting the dignity of the sacrament and the rights of the faithful.

8. Cf. A. MARZOA, "Protección penal...," cit., pp. 169–171.

984 **§ 1. Omnino confessario prohibetur scientiae ex confessione acquisitae usus cum paenitentis gravamine, etiam quovis revelationis periculo excluso.**

§ 2. Qui in auctoritate est constitutus, notitia quam de peccatis in confessione quovis tempore excepta habuerit, ad exteriorem gubernationem nullo modo uti potest.

§ 1. The confessor is wholly forbidden to use knowledge acquired in confession to the detriment of the penitent, even when all danger of disclosure is excluded.

§ 2. A person who is in authority may not in any way, for the purpose of external governance, use knowledge about sins which has at any time come to him from the hearing of confession.

SOURCES: § 1: c. 890 § 1; SCHO Instr., 15 iun. 1915; *SAP* Monitum, 1 feb. 1935 (*AAS* 27 [1935] 62)
§ 2: c. 890 § 2

CROSS REFERENCES: cc. 17, 134 § 1, 260, 262, 295 § 1, 368, 519, 556, 562, 564, 566, 596 § 1, 620, 622, 978, 983, 985

COMMENTARY

Fernando Loza

I. PROHIBITION FROM USING KNOWLEDGE ACQUIRED IN CONFESSION (§ 1)

1. The prohibition that the canon establishes is absolute and without exception: "omnino confessario prohibetur." The clause "even when all danger of disclosure is excluded" explicitly sanctions it, since the supposition of disclosure is already sanctioned in c. 983.

The *ratio legis* is the guardianship of the very sacrament, and of the liberty and complete trust of the faithful. If that which was known in the confession could be used "to the detriment of the penitent," the sacrament would become hateful and the faithful would choose not to receive it.

2. The subject to whom the prohibition is imposed is the confessor. The prohibited object or matter is: "to use knowledge acquired in confession," in other words, not that which is the very matter (direct or indirect)

of the seal (c. 983) but *all that which is known* "ex confessione"; even if absolution has not been imparted.

3. The confessor is prohibited external usage (by action or by omission) in virtue of such knowledge. Strictly personal use (*ad intra*) that the minister may or must do is not prohibited: for example, in order to pray for the penitent, treat the penitent with special kindness, intensify the study of moral Theology and of canon law in order to solve a specific case, improve his very own spiritual life, etc.

4. The clause "to the detriment of the penitent" specifies and circumscribes legal prohibition. Such detriment is all—objectively or subjectively—that could cause harm or trouble, be it material or spiritual. This would inevitably lead to harm to the sacrament and to the rest of the faithful.

This explicit clause has its origin in a *proposition* which was rejected and prohibited by the Holy Office (November 18, 1682). According to this proposition, without violating the seal, it would be lawful to use the knowledge acquired in confession—even to the detriment to the penitent—provided that the harm to the penitent would be greater if such knowledge were not used (Dz.-Sch., 2195).

A similar proposition was made in the *coetus* of the Commission for the Revision of the Code: "Reicitur observatio quae opportunum iudicat exceptionem forsam addere quando in certum et evidens beneficium paenitentis est, quia nemo rem iudicare potest et satis periculosa est."[1]

5. The general criterion that underlies the norm is that the greatest reserve and prudence must always be kept regarding all that is heard, known or deduced, *in* and *due to* confession; avoiding any commentary—even in preachings—regarding what happened or what was known in this sacrament. In this matter, there is no such thing as excessive prudence; to the contrary, it would always be safest and most advisable to be prudent: out of respect for the sacrament and for the penitent; and to avoid any hint or possibility of scandal.

One illustrious moralist stated it concisely in this way: "Confessarius ne loquatur de rebus confessionis nisi cum Deo, orando pro paenitentibus."[2]

1. *Comm.* 10 (1978), p. 67.
2. D.M. PRÜMMER, *Manuale Theologiae Moralis*, III (Rome 1958), p. 321, no. 448.

II. EXPRESS PROHIBITION TO THOSE WHO ARE IN AUTHORITY (§ 2)

1. This § 2 is a precise application of that which is sanctioned in a more general way in § 1. It establishes a specific and absolute prohibition ("nullo modo uti potest") for determined subjects in authority who in any way may make use of, for the external government, "knowledge about sins which has at any time come to him from the hearing of confession."

Once again, the legislator wishes to guarantee the absolute separation between the "internal forum of conscience" and the "external forum" of government. This is done by safeguarding the liberty and independence of everyone and by avoiding the suspicion that the regime or the government may be affected by that which is known in the sacrament of penance.

2. Subjects of the norm: the chosen formula includes everyone "who is in authority"; in other words, those who exercise offices of rule or governance.

The following are, in short:

— Ordinaries (cc. 134 § 1, 295 § 1, 368, 372 § 2, 427)

— superiors (cc. 596, 620, 622);

— parish priests (c. 519) and their equivalents;

— rectors of seminaries (cc. 260, 262);

— chaplains (cc. 564 and 566);

— rectors of churches (cc. 556, 562).

These subjects are obligated by the prohibition, even if they come into authority after the confessions have been made: "quovis tempore."

3. *Object-matter of the prohibition*

The norm explicitly prohibits usage, by the external governance, of the knowledge of the sins acquired, "quovis tempore," due to the confession. The reason is that such use, based on the known sins, would incur in the prohibitory clause of § 1: "cum paenitentis gravamine"; it would make confession hateful, and would make the measures possibly taken by the authorities suspicious.

It is to be observed, however, that in this § 2, the clause "to the detriment of the penitent" is not included. Therefore, the prohibition is absolute and unconditional: the knowledge of the sins acquired by confession may never be used for the external governance, regardless of whether it be detrimental or beneficial to anyone. The reason is that such knowledge is strictly sacramental—*in foro Dei*—and should never leave the sacramental forum in any way; this would happen if the "notitia de peccatis" were to influence—in a positive or in a negative way—the measures of authority.

985 **Magister novitiorum eiusque socius, rector seminarii aliusve instituti educationis sacramentales confessiones suorum alumnorum in eadem domo commorantium ne audiant, nisi alumni in casibus particularibus sponte id petant.**

The director and assistant director of novices, and the rector of a seminary or of any other institute of education, are not to hear the sacramental confessions of their students resident in the same house, unless in individual instances the students of their own accord request it.

SOURCES: c. 891

CROSS REFERENCES: cc. 239–240 § 2, 262, 630 §§ 4 et 5, 650–651, 984, 986

COMMENTARY

Fernando Loza

A relative prohibition

1. The prohibition (relative and conditioned) that the norm establishes is full of legislative wisdom and pastoral prudence. It is a cautious prescription that:

— reaffirms the absolute separation between the "external forum" and the "internal forum of conscience";

— favors fulfillment of c. 984;

— protects the spontaneous liberty and total sincerity of these specific penitents.

2. The canon prescribes that the priests who are designated in the legal text not hear, habitually or ordinarily, the confessions of their "students resident in the same house." In other words, such priests may not hear confessions of those students who live in the same place as they do, who are subject to their obedience and discipline, and who exercise authority over them in the external forum.

With this prohibition, the legislator clearly designates an important normative-pastoral criterion: the *indicative application*, also to other similar cases, for example, Ordinaries, Major superiors, etc. (cf. c. 134 § 1).

3. The prohibition is not absolute. The canon establishes the conditional clause: "unless in individual instances the students of their own accord request it." This clause establishes two requisites:

a) "sponte": the initiative must always come from the spontaneous and complete liberty of the students (in c. 891 *CIC*/1917 it was required that the petition be "ex gravi et urgenti causa." Now, it is enough that it be "sponte"). It remains implicitly prohibited to advise them or encourage them in any way to confess to such priests.

b) "in casibus particularibus": which reinforces the meaning and the purpose of the norm, in other words, that such confessions should not be habitual nor ordinary, but should be exceptional.

4. This canon is complementary to the previous one, in order to facilitate its strict fulfillment in two particularly sensitive cases: the novitiate and the seminary.

986 **§ 1. Omnis cui animarum cura vi muneris est demandata, obligatione tenetur providendi ut audiantur confessiones fidelium sibi commissorum, qui rationabiliter audiri petant, utque iisdem opportunitas praebeatur ad confessionem individualem, diebus ac horis in eorum commodum statutis, accedendi.**

§ 2. Urgente necessitate, quilibet confessarius obligatione tenetur confessiones christifidelium excipiendi, et in periculo mortis quilibet sacerdos.

§ 1. All to whom by virtue of office the care of souls is committed, are bound to provide for the hearing of the confessions of the faithful entrusted to them, who reasonably request confession, and they are to provide these faithful with an opportunity to make individual confession on days and at times arranged to suit them.

§ 2. In an urgent necessity, every confessor is bound to hear the confessions of Christ's faithful, and in danger of death every priest is so obliged.

SOURCES: § 1: c. 892 § 1; *CD* 30; *PO* 13; *RP* 10b, 13; SCDF *Normae Pastorales*, 16 iun. 1972, IV, IX, XII (*AAS* 64 [1972] 512–514); PAULUS PP. VI, Alloc., 20 apr. 1978 (*AAS* 70 [1978] 328–332)
§ 2: c. 892 § 2

CROSS REFERENCES: cc. 134 § 1, 213, 295 § 1, 368, 372 § 2, 427, 528 § 2, 620, 630, 840–841, 843, 844 §§ 3–4, 960, 976–977, 980, 987–988, 991, 976–977

COMMENTARY

Fernando Loza

Duties of pastors and ministers

1. The legislator sanctions, as a juridical obligation, the grave duty of pastors and ministers to administer the sacrament of penance to Christ's faithful (c. 843).[1] Such duty proceedes, *ex iure divino*, from the "munus sacrum" received in sacred ordination, together with the "canonica seu

1. Cf. PCILT, Explanatory Note of canon 961 of the CIC, of November 8, 1996 (Ius Ecclesiae 9 (1997), pp. 818–821), n. 1, where, after setting forth the text of § 1 of this canon, it specifies its juridical description in these clear terms: "That is, in fact, a fundamental right of the faithful and a grave duty of justice of the 'sacri pastores' (cf. canons 213 and 843)."

iuridica determinatio" granted by the conferral of an office and allotment of subjects (*pen* 2). It is an obligation of justice, connected with his ministerial office-function, and is the correlative to the right of the faithful to receive the sacraments (c. 213). Certainly, the effect of those salvific means is pure *grace* and divine *gift*, but its administration is a duty of the pastors and a right of the faithful: "It remains the obligation of pastors to facilitate for the faithful the practice of integral and individual confession of sins, which constitutes for them not only a duty but also an inviolable and inalienable right, besides being something needed by the soul" (*RP* 33).

2. The *ratio* of this norm is precisely to guarantee and facilitate the appropriate and due reception of this sacrament for the faithful, according to "the sole ordinary means" (c. 960), making sure that there be—as the canon mentioned here states—"an opportunity to make individual confession on days and at times arranged to suit them" (§ 1).

a) The obligation determined by the canon is: "to provide for the hearing of the confessions of the faithful entrusted to them," in other words: to facilitate and to see that the penitents receive this sacrament.

b) The subjects of such obligation—who must fulfill it themselves or through other ministers—are "all to whom by virtue of office the care of souls is committed" (§ 1). In short:

— Ordinaries (cc. 134 § 1, 295 § 1, 368);

— parish priests (cc. 519 and 528 § 2) and their equivalents (cc. 516 § 1, 517 § 1, 518, 520, 540 § 1, 541 § 1, 543 § 1);

— rector of a seminary (cc. 260, 262);

— chaplains (cc. 564 and 566);

— rectors of a church (c. 556);

— superiors (in accordance with cc. 596 §§ 1–2, 620, 622, 630).

c) The condition: "who reasonably request confession," must be understood in the sense of pastoral zeal. When a penitent requests confession, it is almost always a reasonable petition, worthy of attention. The suitability or necessity of the sacrament, more than for the minister, must be respected and valued by the penitent.

The complete availability of the minister is always considered due and reasonable. As Pope Paul VI stated, "priests may be required to postpone or even leave aside other activities due to a lack of time, but never should the confessional be one of these."[2]

3. In explicit reference to this grave duty of the pastors, Pope John Paul II made an urgent call "the diligent, regular, patient and fervent exercise of the sacred ministry of penance, to which we are committed by the very fact of our priesthood and our vocation as pastors and servants of

2. *Address to the Bishops of the United States*, April 20, 1978, *AAS* 70 (1978), pp. 328–332.

our brothers and sisters ... I therefore address an earnest invitation to all the priests of the world, especially to my brothers in the episcopacy and to pastors of souls, an invitation to make every effort to encourage the faithful to make use of this sacrament. I urge them to use all possible and suitable means to ensure that the greatest possible number of our brothers and sisters receive the 'grace that has been given to us' through penance for the reconciliation of every soul and of the whole world with God in Christ" (*RP* 31).

All this requires, in the pastoral programming—at the diocesan level, the parochial level and in other communities—that it always be a fundamental priority to establish and fulfill an extensive, generous, definite and accessible pastoral activity with the sacrament of penance.

4. Paragraph 2 contemplates two especially binding suppositions:

a) *Urgent necessity*: according to such hypothesis, the norm sanctions that *all confessors* are obligated to hear the confessions of the faithful. Said necessity may have multiple causes: for example, the Easter season, patronal holy days, pilgrimages, celebrations of marriage, of confirmation, or of first communions, etc.

Such obligation affects the confessor, even when it is a question of faithful who have not been entrusted to his pastoral care: due to the "pastoral charity," which is the primary and fundamental virtue of the priest-minister.

b) *Danger of death*: "all priests" are obligated to hear confessions, whatever their canonical situation may be: for the reason cited in the aforementioned case, and, above all, because the "salus animarum" is at stake (c. 1752).

(See commentary on c. 976, and no. 4 of the commentary on c. 977 regarding *obligatory absolution*).

5. Being that the administration of penance is one of the essential ministries of priests, and that it is so necessary for the faithful, it is requested and expected that ministers show generous *availability*; not only in urgent cases, but also regularly. The faithful fulfillment of this sacred duty by the priests, will effectively contribute to the renewal of the respect for and the frequent reception of this sacrament by the faithful.

A precise and authorized synthesis of the commentary on this canon and this entire chapter is found in these lovely words by the Pope John Paul II: "What a wealth of grace, true life and spiritual radiation would be poured out on the Church if every priest were careful never to miss through negligence or various excuses the appointment with the faithful in the confessional and if he were even more careful never to go to it unprepared or lacking the necessary human qualities and spiritual and pastoral preparation! ... But I also wish to pay homage to the innumerable host of holy and almost always anonymous confessors to whom is owed the

salvation of so many souls who have been helped by them in conversion, in the struggle against sin and temptation, in spiritual progress and, in a word, in achieving holiness … Praise then to this silent army of our brothers who have served well and serve each day the cause of reconciliation through the ministry of sacramental penance!" (*RP* 29).

CAPUT III
De ipso paenitente

CHAPTER III
The Penitent

987 **Christifidelis, ut sacramenti paenitentiae remedium percipiat salutiferum, ita dispositus sit oportet ut, peccata quae commiserit repudians et propositum sese emendandi habens, ad Deum convertatur.**

In order that Christ's faithful may receive the saving remedy of the sacrament of penance, they must be so disposed that, repudiating the sins they have committed and having the purpose of amending their lives, they turn back to God.

SOURCES: *RP* 6a, 11; PAULUS PP. VI, Ap. Const. *Paenitemini*, 17 feb. 1966, I (*AAS* 58 [1966] 179)

CROSS REFERENCES: cc. 213, 959, 988–991

COMMENTARY

William H. Stetson

1. Canons 987–991, which form Ch. III of the title dedicated to the sacrament of Penance, consider the person who is "the penitent" or *subject* of the sacrament. The canon we discuss now specifies this person as *Christ's faithful*—a baptized person (cf. c. 204)—disposed to "turn back to God" for "repudiating the sins they have committed and having the purpose of amending their lives." Those who, with these internal dispositions, duly confess their sins and receive absolution fulfill the requirements called for in c. 959 for the validity and efficacy of the sacrament.

2. Addressing the norm of the subject of the sacrament from the juridical perspective, we should mention the *right* of all the faithful, dutifully disposed, to receive the sacrament from their sacred pastor

(cf. c. 213). This right is implicitly contained in c. 991, and the corresponding *duty* of the pastors is explicitly mentioned in c. 986 (see respective commentaries).

For a better understanding of the importance of this right of the faithful and the corresponding duty on the part of the pastors, it should be kept in mind that while the present canon describes the sacrament as *salutiferum remedium*, the discipline of the Church requires sacramental confession before receiving first communion (cf. c. 914), and, for those conscious of a grave sin, before receiving the Holy Eucharist (cf. c. 916). Canon 889, in its turn, makes it naturally implicit that to receive confirmation, it is required that the person being confirmed is "properly disposed." Canon 1065 § 2 earnestly encourages penance before entering into marriage. For its part, Right of Anointing (July 12, 1972) includes sacramental confession within the continuous rite for the communion of the sick, and for Viaticum. Finally, c. 989 imposes the obligation of confession of grave sins at least once a year.

There are numerous prescriptions throughout the Code that argue for the importance of this right/duty. Thus, c. 240 prescribes there be both ordinary and other confessors in the seminary, so that the seminarians—whose frequent confession is recommended in c. 246 § 4—are free to approach any confessor. Canon 276 § 5 recommends frequent confession for the clergy, and c. 664 for the religious—with respect to which c. 630 orders the provision of suitable confessors and the freedom to approach others. Canon 719 § 3 also recommends frequent confession for members of secular institutes. And, finally, c. 988 § 2 contains an implicit recommendation in the same sense (see commentary) directed to all the faithful. Without doubt, these are sufficient examples to the gravity of the *duty* and the importance of the *right* that, respectively, are attributed to the pastors and to the faithful.

3. The *right* of the penitent to sacramental confession, and of the corresponding *duty* of the pastors, has to be understood in the following terms:

a) the penitent who is rightly disposed has the right to be absolved, although the judgment regarding the existence of the essential dispositions must be demonstrated to the minister;

b) all the faithful have the right to be penitents, that is, to have their confession heard and to receive absolution from their sins by the only ordinary means, that is, the sacrament of penance;

c) at the same time, the gifts of salvation and forgiveness are gracious acts of divine mercy. Therefore, obviously, the right of the faithful is inconceivable as a demand for the supernatural grace of the sacrament, keeping in mind something cannot be justly demanded which is offered as a gracious gift;

d) nonetheless, the fact that Christ has delivered this gift of salvation to the Church, making it the dispenser of the same through its ministries, is the foundation—as an instance before the ministers, and in general before the pastors of the Church—of the right of the faithful to sacramentally receive forgiveness, and the corresponding duty of all pastors to make possible and accessible the exercise of this right, which is above all a need of the soul.

"As the sacrament of penance is the only means instituted by Christ for the forgiveness of mortal sins committed after baptism, the scope of the right considered here is measured first as the soul's need to reconcile with God and the Church. But the sacrament confers, in addition, a specific grace which helps the Christian to persevere in that grace, even when the conscience does not hold a mortal sin."[1]

The Roman Pontiff has repeatedly recalled these dimensions of justice inherent in the administration of the sacrament, expressly mentioning the right and the corresponding duty. The following two texts are useful for all: "Frequently I have insisted not only on the *duty* of general absolution, but also on the *right* that each sinner has to be heard and to return through it to their irreplaceable and irreparable original condition (*Allocutio,* March 29, 1984). "It remains the obligation of pastors to facilitate for the faithful the practice of integral and individual confession of sins, which constitutes for them not only a duty but also an inviolable and inalienable right, besides being something needed by the soul (*RP* 33)."

1. RINCÓN-PÉREZ, in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), pp. 542–543.

988 **§ 1. Christifidelis obligatione tenetur in specie et numero confitendi omnia peccata gravia post baptismum perpetrata et nondum per claves Ecclesiae directe remissa neque in confessione individuali accusata, quorum post diligentem sui discussionem conscientiam habeat.**

§ 2. Commendatur christifidelibus ut etiam peccata venialia confiteantur.

§ 1. Each of Christ's faithful is bound to confess, in kind and number, all grave sins committed after baptism, of which after careful examination of conscience he or she is aware, which have not yet been directly pardoned by the keys of the Church, and which have not been confessed in an individual confession.

§ 2. It is recommended that Christ's faithful confess venial sins also.

SOURCES: § 1: c. 901; *RP* 7a
§ 2: c. 902; SCDF Let. *Cum Oecumenicum Concilium*, 24 iul. 1966, 7 (*AAS* 58 [1966] 660); SCDF *Normae Pastorales*, 16 iun. 1972, XII (*AAS* 64 [1972] 514); *RP* 7b; PAULUS PP. VI, Exhort. Ap. *Gaudete in Domino*, 9 aug. 1975 (*AAS* 67 [1975] 311–312); IOANNES PAULUS II, Alloc., 30 ian. 1981 (*AAS* 73 [1981] 204)

CROSS REFERENCES: cc. 959, 962–963, 989–991

COMMENTARY

William H. Stetson

1. "Penance moves the sinner to suffer all voluntarily; in the heart, contrition; in the mouth, confession; in works, all humility and fruitful satisfaction."[1]

Contrition, confession of sins and satisfaction are the essential acts of the penitent,[2] summarily recalled in c. 959. Canon 988 § 1 addresses one of these, the *confession*, for which, "Through such an admission man looks squarely at the sins he is guilty of, takes responsibility for them, and

1. *Catecismo Romano*, cit. por CCE, 1450.
2. Cf. CCE, 1450–1460.

thereby opens himself again to God and to the communion of the Church in order to make a new future possible" (CCC, 1455).

This new opening to God, or conversion, by the rejection of sins and the purpose of amending one's life, requires that the penitent be conscious of all grave sins committed that have not yet been forgiven. This is achieved, as the canon specifies, "after careful examination." In the same way, the absolution of the priest and the satisfaction imposed require, as a type of judicial act (cf. *RP* 31), that the confessor know the number and types of grave sins. Thus, a diligent examination of conscience would be a previous necessary requisite so that the formal integrity of the confession approaches, as much as humanly possible, material integrity. Examination of conscience is "an act that must never be one of anxious psychological introspection, but a sincere and calm comparison with the interior moral law, with the evangelical norms proposed by the Church, with Jesus Christ himself, who is our Teacher and Model of life, and with the heavenly Father, who calls us to goodness and perfection" (*RP* 31, III).

Specifically, the formal integrity of the sacrament, and the tenor of the words of the canon, can be broken down as follows:

a) *confession*: it is not sufficient to recognize and feel sorrow for all the grave sins committed. It is required that this be demonstrated within the sacrament. John Paul II beautifully explains the rationality of this norm: "The confession of sins is required, first of all, because the sinner must be known by the person who in the sacrament exercises the role of judge. He has to evaluate both the seriousness of the sins and the repentance of the penitent; he also exercises the role of the healer and must acquaint himself with the condition of the sick person in order to treat and heal him. But the individual confession also has the value of a sign: a sign of the meeting of the sinner with the mediation of the Church in the person of the minister, a sign of the person's revealing of self as a sinner in the sight of God and the Church, of facing his own sinful condition in the eyes of God. The confession of sins therefore cannot be reduced to a mere attempt at psychological self-liberation even though it corresponds to that legitimate and natural need, inherent in the human heart, to open oneself to another" (*RP* 31, that is, of III); it is a liturgical act, solemn in its performance, humble and sober in the grandeur of its significance.

b) *of all grave sins*: the need for the confession to be *integral:* "*all* the grave sins committed after baptism"—a teaching of the Church that "is in force and always will be"[3]—is specified in the canon by the requirement to confess one's sins "in kind and in number." "The penitents should name all the mortal sins of which they are aware after having seriously examined their conscience, even if these sins are very secret and have been committed only against the last two Commandments, since, sometimes,

3. JOHN PAUL II, *Allocutio*, January 30, 1979.

these sins harm the soul more gravely and are more dangerous than those that have been committed in public view"[4];

c) *of which one is aware*: an obligation can only exist for what is possible (*ad impossibilia nemo tenetur*), therefore the faithful are obligated to confess only those sins of which they are aware at the time. This is the aforementioned *formal integrity*, which through "diligent examination" should bring one as close as possible to the material integrity, which is, in itself, sufficient for the validity of the absolution;

d) *which have not yet been directly pardoned by the keys of the Church*: the specific terms of the canon include: *a)* of course, sins that are not yet confessed are not forgiven; *b)* also those whose pardon could already have been obtained through perfect contrition, prior to the confession (cf. CCC, 1452); and *c)* those grave sins that, having been inadvertently forgotten in valid confession (formal integrity), were "indirectly" pardoned, but that still have not been submitted directly to the *potestas clavium*;

e) *and which have not been confessed in an individual confession*: this is the only variation of relief with respect to c. 901 of the *CIC*/1917, that is explained by the possibility of general absolution without prior individual confession of c. 961. When this exceptional situation is present, the penitent remains bound nonetheless by the divine precept of individual and integral confession of sins that must be done "as soon as possible" (see cc. 962–963 and commentaries).

2. Reaffirming the traditional teaching that venial sins constitute sufficient matter, although not necessary, for the sacrament § 2 of the canon contains a pastoral recommendation of great importance for the Christian life: confession, called "of devotion," of venial sins.

In this respect, it is important to remember that the study of the law of the Church cannot fall upon a reductionist "legalism," and with greater reason such an extreme in the canonical treatment of the sacraments must be avoided. It is a function of the canonist—as a necessary requisite to the strict interpretation of the norms in an ecclesiastical sense—to appraise the importance of the same for the vitality of the Church, and to emphasize those legal norms that in a special way promote and protect the Christian life.

In order to understand the importance of frequent confessions, one should keep in mind that the sacrament of Penance "is not only an instrument directed to destroy sin—the negative aspect—but also a valuable exercise of virtue, which is itself expiation, an irreplaceable school of spirituality, a profoundly positive process of regeneration in the should of the 'vir perfectus' 'in mensuram aetatis plenitudinis Christi' (cf. Eph 4, 13).

4. Cc. of Trent, collected by the CCC, 1456.

In this sense, the confession rightly instituted is already, in itself, a very lofty form of spiritual direction. Precisely for these reasons the scope of utilization of the sacrament of reconciliation cannot be reduced to a mere hypothesis of grave sin: apart from considerations of a dogmatic character which could be made in this regard. We call to mind that confession made at intervals, the so-called confession "of devotion," has always accompanied the ascent to holiness in the Church."[5]

5. *Allocutio*, January 30, 1981, in *AAS* 73 (1981), p. 204. Cf. also CCC, 1458.

989 **Omnis fidelis, postquam ad annos discretionis pervenerit, obligatione tenetur peccata sua gravia, saltem semel in anno, fideliter confitendi.**

All the faithful who have reached the age of discretion are bound faithfully to confess their grave sins at least once a year.

SOURCES: c. 906; *GCD* Addendum; SCDS et *SCCong* Decl., 24 maii 1973 (*AAS* 65 [1973] 410); SCDF *Normae Pastorales*, 16 iun. 1972, VII (*AAS* 64 [1972] 512–513)

CROSS REFERENCES: cc. 914, 963, 987–991

COMMENTARY

William H. Stetson

1. This canon contains two matters of great practical interest:

a) According to the Decree *Quam singulari* of S. Pius X,[1] the canon establishes a minimal criterion of mental maturity in order to receive the sacrament of penance. This age being "the age of discretion," it is presumed that all the faithful who have attained such a degree of mental maturity are capable of exercising the right to receive the sacrament as long as they adhere to the corresponding obligations. This is in accordance with c. 914 (see commentary), which prescribes that sacramental confession should precede first communion (*praemissa sacramentali confessione)* and be part of the required preparation for the first communion of children.

b) This canon formulates the *precept* of annual confession, which is composed of a norm of divine law in which reference is made to the need to confess grave sins(recalled in c. 988, see commentary) and a determination of ecclesiastical law regarding the minimum criterion of frequency (*saltem semel in anno*).

This determination of confessing grave sins *at least* once a year does not contradict the moral principle by which the person found to be with mortal sin is obligated to leave this state as soon as possible. Rather, on the contrary, with this precept the Church urges the faithful toward the necessity of the sacrament, as an ordinary means to obtain forgiveness for those sins. As with the other mandates of the Church, (see commentary on

1. August 8, 1910, in *AAS* 2 (1910), p. 583.

c. 920) it "is meant to guarantee to the faithful the indispensable minimum in the spirit of prayer and moral effort, in the growth in love of God and neighbor" (CCC, 2041).

2. In reference to the confession of children (see c. 777, 2° and commentary), the following should be considered:

a) S. Pius X, in the cited Decree *Quam singulari* condemned any custom that did not admit to confession and never absolved any children who had attained the use of reason;

b) The *GCD*, in the *Addendum*, no. 5, although it ratified as prevailing in the Church the custom of the confession of children before first communion, it nonetheless tolerated *ad experimentum* certain contrary *practice*;

c) Finally, a Joint Declaration of the SCDS and *SCCong* of May 24, 1973[2] put an end to said experiments, determining that it is necessary to observe *ubicumque et ab omnibus* the prescriptions of the Decree *Quam singulari* of S. Pius X.

2. *AAS* 65 (1973), p. 410.

990 **Nemo prohibetur quominus per interpretem confiteatur, vitatis quidem abusibus et scandalis atque firmo praescripto can. 983 § 2.**

No one is forbidden to confess through an interpreter, provided however that abuse and scandal are avoided, and without prejudice to the provision of Can. 983 § 2.

SOURCES: c. 903; *CD* 30

CROSS REFERENCES: cc. 983 § 2, 1388 § 2

COMMENTARY

William H. Stetson

Substantially, this canon repeats the content of c. 903 of the *CIC/* 1917, authorizing the use of an interpreter for the confession of a person who does not speak the same language as the priest.

The important condition of avoiding abuse and scandal indicates that this is a norm that should be applied prudently on a case-by-case basis.

The interpreter is obliged to keep the secret as established in c. 983 § 2, to which the canon directly refers. Canon 1388 § 2, in its turn, reinforces this obligation of secrecy, with a just penalty (see commentary).

Two major issues underlie this norm. The first is that the importance of sacramental confession for the life of the faithful is such that the Church authorizes this exceptional manner of carrying out the individual, oral and secret confession. The second is the firm protection that the Church grants to the dignity of the sacrament, placing as a condition the avoidance of any risk of abuse or scandal, and binding the interpreter seriously with the obligation of secrecy (c. 983 § 2).

991 **Cuivis christifideli integrum est confessario legitime approbato etiam alius ritus, cui maluerit, peccata confiteri.**

All Christ's faithful are free to confess their sins to lawfully approved confessors of their own choice, even to one of another rite.

SOURCES: c. 905; *OE* 16

CROSS REFERENCES: cc. 240 § 1630 § 1, 719 § 3, 843–844, 846, 965–986, 987–990

COMMENTARY

William H. Stetson

1. Two issues appear strongly underlined upon first reading the canon: the utmost respect of the Church to the freedom of the faithful regarding their internal life, and the enormous importance the sacramental confession has to the life of the faithful Christian.

2. The canon formulates explicitly the *right of all faithful to confess to confessors of their own choice* among those legitimately approved, even they may be of another rite. This is a right that, as noted by Rincón-Pérez, "may well be configured as fundamental, although it does not appear to be placed in the Code within the systematic standard of the fundamental state of the faithful."[1] In effect, few things can touch the person of faith so directly in their own dignity and intimacy (cf. c. 220), or are more sensitive to all threat, although remote, of coercion (cf. c. 219), as confession. Sacramental confession is necessary for the realization of the faithful Christian as a member of the people of God whose condition is the dignity and freedom of the children of God, in whose hearts the Holy Spirit lives as in a temple (Cf. *LG* 9).

What is proclaimed here as a right of all the faithful has already been expressly and broadly established in addressing those faithful who by some peculiar situation could be seen as having their freedom diminished in some way. This is the case of a member of a religious institute (c. 630 § 1), of a secular institute (c. 719 § 3), or of a seminary student (c. 240 § 1) (see respective commentaries).

1. T. RINCÓN-PÉREZ, "Libertad del seminarista para elegir el 'moderador' de su vida espiritual," in *Ius Canonicum* 28 (1988), p. 479.

3. Implicitly, but necessarily, the canon contains the right, already commented upon in the subject of c. 987, to receive the sacrament. In effect, "Sacred ministers may not deny the sacraments to those who opportunely ask for them, are properly disposed and are not prohibited by law from receiving them" (c. 843 § 1). It would be difficult to put into practice the right created by the canon discussed here, if it were not protected by the corresponding obligation of the ministers.

The eventual legal prohibitions that could *limit* free choice on the part of the penitent are determined by the canon itself, which refers to the penitent's choice of "lawfully approved" confessors. The issue is regulated by cc. 965–986.

4. The right to choose from any legitimately approved confessor extends even to confessors of another rite that, as specified in c. 846 § 2, will celebrate the sacrament according to their own rite. Naturally, "other rite" is understood as another Catholic rite, whether Latin or Eastern, different from the Roman rite (see cc. 111–112 and commentaries).

(For the confession of a Catholic in a non-Catholic church, and vice versa, that is, of a baptized non-Catholic before a Catholic minister, see c. 844 and commentary).

CAPUT IV
De indulgentiis

CHAPTER IV
Indulgences

992 **Indulgentia est remissio coram Deo poenae temporalis pro peccatis, ad culpam quod attinet iam deletis, quam christifidelis, apte dispositus et certis ac definitis condicionibus, consequitur ope Ecclesiae quae, ut ministra redemptionis, thesaurum satisfactionum Christi et Sanctorum auctoritative dispensat et applicat.**

An indulgence is the remission in the sight of God of the temporal punishment due for sins, the guilt of which has already been forgiven. A member of Christ's faithful who is properly disposed and who fulfils certain conditions, may gain an indulgence by the help of the Church which, as the minister of redemption, authoritatively dispenses and applies the treasury of the merits of Christ and the Saints.

SOURCES: c. 911; PAULUS PP. VI, Ap. Const. *Indulgentiarum doctrina*, 1 ian. 1967, Normae 1 (*AAS* 59 [1967] 21); *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 1 (*AAS* 60 [1968] 414)

CROSS REFERENCES: cc. 995

COMMENTARY

José A. Marques

Titulus IV ("The sacrament of Penance") of *Liber* IV, pt. I, ch. IV ("Indulgences") begins its first canon with a description or concept of indulgence. That description or concept is a literal transcription of norm 1° of the Apostolic Constitution *Indulgentiarum doctrina*, promulgated on January 1, 1967 by Pope Paul VI, and also of norm 1° of the *Enchiridion indulgentiarum*, promulgated by the Decree of the *SAP* on June 29, 1968.[1]

1. *AAS* 59 (1967), pp. 5–24; *AAS* 60 (1968), pp. 413–419, respectively. The *Enchiridion indulgentiarum* has been revised; currently in force is the fourth edition of the *Enchiridion indulgentiarum*, July 16, 1999.

Indulgences are considered as a complement to the sacrament of penance, given that they remit, by means of sacramental satisfaction, temporal penalties that remain in the soul of the justified person. Such penalties are remitted due to the power of indulgences conceded by the Church.

From the description of indulgence that the canon offers, we can extract the elements of a true concept of said indulgence: *a)* the remission in the sight of God of the temporal punishment; *b)* due for sins, the guilt of which has already been forgiven; therefore, it is an extra-sacramental remission; *c)* by the help of the Church; *d)* which, as the minister of redemption, authoritatively dispenses and applies the treasury of the satisfactions of Christ and the Saints; *e)* the capable subject is a member of Christ's faithful who is properly disposed; and *f)* who fulfils certain conditions. Here we will make a few clarifications:

a) Indeed, an indulgence is the remission of *a penalty, not of guilt*, not even of venial guilt. In order to remit venial guilt, an act is required of the sinner, be it a virtual or formal detestation of one's guilt. Such act may only be carried out by the penitent, not by another; furthermore, the remission that follows this act is not an indulgence conceded by the Church, but an "indulgence" of God, who, once the detestation has been performed, remits guilt Himself.

b) Indulgence is the remission of the penalty due to God, not of the penalty that should be suffered due to the fact that, in such case, it has been imposed by the Church. This penalty, due to God, is the only one that the indulgence frees the penitent from, since it is given to those who are not bound to the penalty imposed by the Church.

c) Indulgence is given *extra sacramentum*, as is evident, and without any sacramental action (e.g., by the force of law, which is still in place after the death of the granter).

d) Indulgences are granted from the treasury of the satisfactions of Christ and the Saints. Since the Church is not the owner, but only the administrator of the treasury of the satisfactions of Christ and the Saints, it is not lawful for the Church to administer this treasury arbitrarily. It requires a just cause, which can be approved and accepted by God; in other words, a pious final cause, or any other good whose acquisition, keeping in mind the divine glory and all that God, according to his ordinary providence, requires of us, is considered the same as or would be more acceptable to God than the personal satisfaction that the faithful render for their sins.

e) Finally, the indulgence requires a capable subject, in other words a member of the Church who belongs, through one's actions in fact, to the communion of the Church, and who is indicated in the canon with the adjective "apte dispositus."

This concept of indulgence summarizes the entire traditional doctrine on indulgences, which is explained in the Apostolic Constitution *Indulgentiarum doctrina*, quoted above. In fact, all the dispositions found in the chapter that opens the present canon compose a summary of the quoted Apostolic Constitution and of the *Enchiridion indulgentiarum*, which has reorganized and revised the entire discipline of indulgences.

993 **Indulgentia est partialis aut plenaria, prout a poena temporali pro peccatis debita liberat ex parte aut ex toto.**

An indulgence is partial or plenary according as it partially or wholly frees a person from the temporal punishment due for sins.

SOURCES: PAULUS PP. VI, Ap. Const. *Indulgentiarum doctrina*, 1 ian. 1967, Normae 2 (*AAS* 59 [1967] 21); *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 2 (*AAS* 60 [1968] 414)

CROSS REFERENCES: cc. 992, 997

COMMENTARY

José A. Marques

In this norm (which is norm 2° of the Apostolic Constitution *Indulgentiarum doctrina*, promulgated on January 1, 1967 by the Pope Paul VI, and also of the *Enchiridion indulgentiarum*, promulgated by the Decree of the *SAP* on June 29, 1968[1]), the many distinctions of the previous discipline are repealed.

From now on, indulgence is plenary or partial. One can no longer speak of personal nor local, perpetual nor temporal indulgences, as is indicated in *Indulgentiarum doctrina*, 12 and in the early *Enchiridion indulgentiarum*, 7, where this change was justified "so that it may become clear that those that become rich through indulgence are the work of the faithful, although at times these works are tied to things or places."

Nor are partial indulgences spoken of in periods of days or years: from now on, a partial indulgence will only be designated with these words: "partial indulgence," without any determination of days or years (cf. *Indulgentiarum doctrina*, 4 and *Enchiridion indulgentiarum*, 2, which in its new edition includes the text of this canon).

In this way, indulgences are plenary or partial, according as they partially or wholly free a person from the temporal punishment due for sins.

1. *AAS* 59 (1967), pp. 5–24; *AAS* 60 (1968), pp. 413–419, respectively. Currently in force is the fourth edition of the *Enchiridion indulgentiarum*, July 16, 1999.

994 Quivis fidelis potest indulgentias sive partiales sive plenarias, aut sibi ipsi lucrari, aut defunctis applicare ad modum suffragii.

All members of the faithful can gain indulgences, partial or plenary, for themselves, or they can apply them by way of suffrage to the dead.

SOURCES: PAULUS PP. VI, Ap. Const. *Indulgentiarum doctrina,* 1 ian. 1967, Normae 3 (*AAS* 59 [1967] 21); *SAP* Decr. *In Constitutione,* 29 iun. 1968, Normae de Indulgentiis, 4 (*AAS* 60 [1968] 414)

CROSS REFERENCES: cc. 204 § 1, 992, 997

COMMENTARY

José A. Marques

This disposition modifies the provision of c. 930 of *CIC*/1917. According to this canon, unless it was established otherwise, only the indulgences granted by the Roman Pontiff could be applied to the dead. Now, each of the faithful can always gain either partial or plenary indulgences for themselves, or apply them, by way of suffrage, to the dead.

When it is said that an indulgence is applicable to the dead, it is given *directly* to the living and *indirectly* (by way of mediation) to the dead. A person who meets the requirements for the granting of an indulgence (e.g., visiting a church) receives the indulgence directly, and the indulgence is granted indirectly to the faithful departed for whom the act (the cause of the indulgence, which the departed cannot personally carry out) is applied.

The operative factor here is an act of power and of dispensation from the treasury that the Church possesses, which it can also dispense in favor of the dead. This act is a mitigation of temporal punishment in favor of the dead, under the control of the authority of the Church: it is an act of *potestas clavium* in favor of human beings.

In the indulgence in favor of the living, the one who receives the indulgence is the very one who carries out the good work. On the other hand, it is obviously not the deceased but the living faithful, bound by charity to the deceased, who carries out the work for the indulgence in favor of the dead. In this way, with a private authority it can be applied by way of private suffrage, and with the authority of the Church, it can be applied for by way of indulgence. In other words, it is according to the price

which satisfies the treasury of the Church, or according to the remission of the penalty which is obtained through indulgence. This remission is obtained, therefore, by the same living faithful, not in the sense that one's own penalties are remitted, but in that one carries out the cause by which the faculty to apply this remission of penalty to the dead is conceded to one. The equivalent value of the penalty is dispensed and applied by the Church from the treasury of the merits of Christ and the Saints.

995 **§ 1. Praeter supremam Ecclesiae auctoritatem ii tantum possunt indulgentias elargiri, quibus haec potestas iure agnoscitur aut a Romano Pontifice conceditur.**

§ 2. Nulla auctoritas infra Romanum Pontificem potest potestatem concedendi indulgentias aliis committere, nisi id ei a Sede Apostolica expresse fuerit indultum.

§ 1. Apart from the supreme authority in the Church, only those can grant indulgences to whom this power is either acknowledged in the law, or given by the Roman Pontiff.

§ 2. No authority below the Roman Pontiff can give to others the faculty of granting indulgences, unless the authority has been expressly given to the person by the Apostolic See.

SOURCES: § 1: c. 912; *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 8 (*AAS* 60 [1968] 415)
§ 2: c. 913; *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 10,1° (*AAS* 60 [1968] 415)

CROSS REFERENCES: cc. 361, 992, 997

COMMENTARY

José A. Marques

This norm derives from norm no. 8 of the early *Enchiridion indulgentiarum*, originally promulgated by the Decree of the *SAP* of June 29, 1968,[1] where it was stated that "apart from the Roman Pontiff, to whom the dispensation of the entire spiritual treasury of the Church has been entrusted by Jesus Christ, the only ones who can give indulgences, with ordinary power, are those to whom the right has been expressly granted."

No. 5 of the current edition of the *Enchiridion* (1999) includes the text of this canon. According to theologians, the power to grant indulgences is derived from the *potestas clavium*.

The canon under discussion determines, on the one hand, that the subject in whom the power to grant indulgences resides is the Roman Pontiff. On the other hand, it also admits two possibilities of delegating that granting: concession of the law ("to whom this power is … acknowledged

1. *AAS* 60 (1968), pp. 413–419.

in the law") or delegation by the Roman Pontiff ("to whom this power is ... given by the Roman Pontiff"). It also says, in a negative way, that "no authority below the Roman Pontiff can give to others the faculty of granting indulgences"; and it indicates an exception: "unless the authority has been expressly given to the person by the Apostolic See." The *Enchiridion*, in norm 9, determines that in the Roman Curia, such competence belongs to the Penitentiary.

Therefore, the original subject that primarily and in himself has the power to grant indulgences is the Roman Pontiff. Indeed, indulgence is "the remission in the sight of God of the temporal punishment due for sins, the guilt of which has already been forgiven ... by the help of the Church which, as the minister of redemption, authoritatively dispenses and applies the treasury of the merits of Christ and the Saints" (c. 992). And because this treasury does not belong to any one diocese, but to the entire Church, and cannot, therefore, be dispensed independently of the Roman Pontiff, the nature of things requires that its dispensation be entrusted to he who governs the universal Church, in other words, the Roman Pontiff. Therefore, it is the Roman Pontiff who must grant all indulgences (plenary as well as partial), in favor both of the living and of the deceased. Those who are inferior to the Roman Pontiff may not give to others the faculty of granting indulgences, unless the Holy See expressly authorizes them to do so.

a) The diocesan bishops and their equivalents in law, from the beginning of their pastoral *munus*, have, by law, the power to: *1*) grant a partial indulgence to the people or in the places under their jurisdiction; *2*) give the papal blessing in their diocese with plenary indulgence—in accordance with the prescribed formula—three times a year, on solemn holy days, designated by them, even if they only attend the solemn Mass (cf. *Enchiridon*, 7).

b) Metropolitans may grant partial indulgence in the suffragan dioceses in the same manner as in their own (cf. *Enchiridion*, 8).

c) Patriarchs may grant a partial indulgence within the places of their patriarchate, even those that are exempt, in the churches of their rite outside the limits of their patriarchate, and to the faithful of their rite in any place. Major archbishops possess the same power (cf. *Enchiridion*, 9).

d) Cardinals may grant a partial indulgence in the locations or institutions which are under their jurisdiction or protection; likewise in other locations, but only to those persons who are present and *ad actum* (cf. *Enchiridion*, 10).

996 **§ 1. Ut quis capax sit lucrandi indulgentias debet esse baptizatus, non excommunicatus, in statu gratiae saltem in fine operum praescriptorum.**

§ 2. Ut vero subiectum capax eas lucretur, habere debet intentionem saltem generalem eas acquirendi et opera iniuncta implere statuto tempore ac debito modo, secundum concessionis tenorem.

§ 1. To be capable of gaining indulgences a person must be baptized, not excommunicated, and in the state of grace at least on the completion of the prescribed work.

§ 2. To gain them, however, the person who is capable must have at least the general intention of gaining them, and must fulfil the prescribed works at the time and in the manner determined by the terms of the grant.

SOURCES: § 1: cc. 925 § 1, 2262; *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 22 § 1 (*AAS* 60 [1968] 417)
§ 2: c. 925 § 2; *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis, 22 § 2 (*AAS* 60 [1968] 417)

CROSS REFERENCES: cc. 992

COMMENTARY

José A. Marques

The text of the canon is almost identical to that of no. 22 of the *Enchiridion indulgentiarum*, promulgated by a Decree of *SAP*, June 29, 1968.[1] In the current edition of the *Enchiridion* (1999), no. 17 includes literally this canon.

It is a question of the capacity to gain indulgences (§ 1), and of the conditions necessary for the capable subject to actually earn them (§ 2). The capacity depends on whether the subject has been baptized, is not excommunicated, is in the state of grace, at least at the completion of the prescribed work, and is subject to he who grants the indulgences.

In order for the subject who is capable of gaining indulgences to actually gain them, one must satisfy two requisites: *a*) to at least have the general intention of gaining them; and *b*) to fulfill the prescribed works within the determined amount of time and in the correct way, in accordance with the grant of the indulgences.

1. *AAS* 60 (1968), pp. 413–419.

997 Ad indulgentiarum concessionem et usum quod attinet, servanda sunt insuper cetera praescripta quae in peculiaribus Ecclesiae legibus continentur.

As far as the granting and the use of indulgences is concerned, the other provisions contained in the special laws of the Church must also be observed.

SOURCES: *SAP* Decr. *In Constitutione*, 29 iun. 1968, Normae de Indulgentiis (*AAS* 60 [1968] 414–419)

CROSS REFERENCES: cc. 992–996

COMMENTARY

José A. Marques

This last canon in the chapter "Indulgences" remits to the remaining prescriptions contained in the particular laws of the Church which refer to the concession and use of indulgences. Said particular laws are currently contained in the *Enchiridion indulgentiarum*, promulgated by Decree of the AP, June 29, 1968,[1] which will be mentioned here.

1. Regarding the granting of indulgences—besides that which is prescribed in the aforementioned canons—the contents of *Enchiridion indulgentiarum*, 7 and 24–26, should be kept in mind. In this way, indulgences granted by the bishop can be gained by his subjects outside his territory and by pilgrims, *vagi*, and all those exempt in the territory of he who grants them, if there is no provision to the contrary in accordance with the grant. On the other hand, the confessors may commute the prescribed works, or the conditions that they, legitimately prevented, cannot comply with (no. 24). Finally, the local ordinaries may grant the faculty to gain plenary indulgence without actual communion and confession to the faithful over whom they have jurisdiction, in accordance with the law, if they are in a place in which they cannot or it is very difficult for them to receive communion or to confess, under the condition that they are repentant and that they promise to approach the aforementioned sacraments as soon as possible (no. 25).

It is also advisable to keep the following in mind: all the books, opuscules, printed material, etc., that contain concessions of indulgences, should not be publicized without the authorization of the local ordinary or

1. Typis Vaticanis (Vatican City 1999).

hierarchy (*Enchiridion indulgentiarum*, 11 § 2). Express permission from the Apostolic See is necessary to edit, in any language, the authentic collection of prayers and pious works indulgenced by the Apostolic See (ibid. § 1). One who obtains from the Supreme Pontiff the concession of indulgences for all Christ's faithful, is bound, in order for the concessions to become effective, to present the authentic documents of said concessions to the AP (ibid. § 12).

2. Concerning the usage of indulgences, it is important to pay attention to the contents of *Enchiridion indulgentiarum*, 18 ff. These norms refer, above all, to plenary indulgences. In the first place, plenary indulgence can only be gained once a day (no. 18 § 1). However, plenary indulgence can be gained, *in articulo mortis*, even if another has been gained on the same day (ibid. § 2). Partial indulgences can be gained several times a day (ibid. § 1). The prescribed work to gain a plenary indulgence attached to a church or oratory is the pious visit to these, and once there, to recite the Lord's prayer and the Profession of faith (the Our Father and the Creed) (no. 19). In order to gain plenary indulgence, fulfillment of the indulgenced work and the three following conditions are required: sacramental confession, eucharistic communion and prayer for the intentions of the Roman Pontiff. Also, it is necessary that no attachment exist to any sin, even to venial sin. If this entire disposition is missing or if the indicated conditions are not fulfilled—unless there is an impediment—the indulgence will only be partial (no. 20 §§ 1 and 4).

The three conditions to gain plenary indulgence may be fulfilled several days before or after the prescribed work has been carried out. However, it is advisable that the communion and the prayer for the intentions of the Roman Pontiff be carried out the same day that such work is carried out (no. 20 § 3).

Several plenary indulgences can be gained with only one sacramental confession. However, with only one eucharistic communion and only one prayer for the intentions of the Roman Pontiff, only one plenary indulgence can be gained (no. 20 § 2).

The condition of praying for the intentions of the Roman Pontiff is completely fulfilled by praying one Our Father and one Hail Mary for the Roman Pontiff's intentions; however, Christ's faithful may pray any other prayer, according to the devotion and piety of each one (no. 20 § 5).

The norms established for plenary indulgences, especially the one that is referred to in no. 18 § 1 (plenary indulgence can only be gained once a day), also apply to the plenary indulgences that were called "toties quoties" (no. 21).

Indulgence cannot be gained through a work that is obligated to be practiced by law or by precept, unless it is otherwise and expressly stated in the concession. But one who practices a work imposed in the sacrament

of penance which is enriched with an indulgence, can thereby satisfy the penance and at the same time gain the indulgence (no. 21).

An indulgence which is attached to a prayer can be gained in any language in which said prayer is recited, with the condition that the translation has been approved by the competent ecclesiastical authority (no. 22).

In order to gain indulgences, it is enough to recite the prayer alternately with another person or to accompany them mentally while they recite it (no. 23). The mute can gain indulgences which are attached to public prayers if, being in the same place as other faithful who pray said prayers, elevate their pious sentiments and thoughts towards God. If it is a question of private prayer, it is enough to say them mentally or manifest them through signs or by running their eyes over them (no. 26).

3. It is also advisable to keep in mind that an indulgence which is attached to any holy day, is transferred to the same day that the holy day is transferred, or for the day that the external solemnity is carried out (no. 13). When, in order to gain an indulgence which is attached to any given day, a visit to a church or oratory is required, said visit may be carried out at any time starting at midday of the day before until midnight on the referred day (no. 14).

A faithful who devotedly uses a *religious article* (crucifix or cross, rosary, scapular or medal) that has been blessed by any priest gains partial indulgence (no. 5). Indulgences which are attached to a visit to a church do not cease if said church has been completely destroyed and rebuilt in the same—or almost the same—place and under the same title within 50 years (no. 16). An indulgence which is attached to a *religious object* no longer exists if the object is destroyed or sold (ibid. § 2).

Following these norms on the concession and the use of indulgences are four general concessions of indulgence, all of which are partial, and other concessions.

TITULUS V
De sacramento unctionis infirmorum

TITLE V
The Sacrament of the Anointing of the Sick

INTRODUCTION

Bronisaw Wenanty Zubert, ofm.

The norms in *CIC* that regulate the administration of the sacrament of the Anointing of the Sick (cc. 998–1007) reflect its essential modern understanding of theology. When defining this sacrament, *CIC*/1917 still used the terms "sacrament of extreme unction "(cf. cc. 937ff *CIC*/1917). However, in the middle of this century, the conviction that the danger of death is not an absolutely necessary condition to receive this sacrament was reinforced, especially in the liturgy and in pastoral theology. After the publication of Apostolic Constitution *Sacram Unctionem infirmorum* (November 30, 1972) by Paul VI, and the publication of *Ordo unctionis infirmorum* (December 7, 1972) by the *SCDW*, the current terms have been definitively accepted in the canonical and liturgical texts, and in the doctrine.[1]

1. The terminological change seems to have had a historical motive, being that the juridical decisions in this matter were not uniform. It is impossible to consider the theological, liturgical and historical matters that affect the sacrament of the anointing of the sick in its full complexity. But it is advisable to indicate that up until the eighth to the ninth centuries—as

1. Ap. Const. *Sacram Unctionem Infirmorum*, of November 30, 1972, *AAS* 65 (1973), pp. 5–9; *SCDW*, Decr. *Ordo Unctionis Infirmorum eorumque pastoralis curae*, *AAS* 65 (1973), pp. 275–276; *Ordo unctionis infirmorum eorumque pastoralis curae* (RA) (Typis polyglottis Vaticanis 1972); cf. *SCDW*, Decr. *Quo vacatio legis de Ordine Unctionis infirmorum prorogatur*, *Comm.* 6 (1974), p. 28; J. FEINER, "Die Krankheit und das Sakrament des Salbungsgebetes," in *Mysterium salutis*. Grundriß heilsgeschichtlicher Dogmatik, hrsg. von J. FEINER-M. LÖHRER, Bd. V (Zurich-Einsiedeln-Köln 1976), pp. 520–521; E. SZTAFROWSKI, "Odnowione przepisy prawno-liturgiczne sakramentu namaszczenia chorych," in *Prawo kanoniczne* 19 (1976), pp. 66–67. L. GEROSA, "Krankensalbung," in R. AHLERS-L. GEROSA-L. MÜLLER, *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), p. 71.

H. Vorgrimler[2] has shown—it was possible to administer the anointing to oneself and to be anointed for any physical ailment. It was only in the twelfth century, when from the multitude of "sacramental" actions, that the number of seven sacraments was crystallized. It was then that, out of the numerous "anointings" used as universal medicine, only the anointings administered to gravely sick persons that were truly in danger of death were recognized as a sacrament. Therefore, it would be an anachronism to maintain that in the primitive Church any sick person could receive the "sacrament" of the anointing of the sick, or to count each one of the anointings of the sick as "sacramentals." The subdivision between sacraments and sacramentals is only the result of Scholastic theology, in which, in addition to the sacrament of extreme unction, there is clearly an eschatological function, while the other anointings and blessings that are administered to the sick are considered to be sacramentals.[3] It is only in this context that the decision of the Council of Florence is understandable, in which the *Bulla unionis Armenorum* (November 22, 1439) states: "Hoc sacramento nisi infirmo, de cuius morte timetur, dari non debet."[4] In accordance with this norm, the administration of the anointing to a sick person was closely bound to the fear of said person's death, in other words, the danger of death. However, the Council of Trent already widely regulated the issue, establishing that: "Declaratur etiam, esse hanc unctionem infirmis adhibendam, illis vero praesertim, qui tam periculose decumbunt, ut in exitu vitae constituti videantur, unde et sacramentum exeuntium nuncupatur."[5] The terms "illis praesertim" indicate that the danger of death constitutes a clear, but not the only, moment in which it is necessary to administer the sacrament of the anointing. However, *CIC*/1917 accepted a limited understanding of the Tridentine norm, establishing that "Extrema unctio praeberi non potest nisi fideli, qui ... in periculo mortis versetur" (c. 940 § 1 *CIC*/1917).

The current modification of the terms leads us to the profound theological reflection, by the Vatican Council II, on the sacrament of the anointing of the sick. It tells us of this in several places, particularly in *Sacrosanctum Concilium*, 73–75, *Lumen gentium*, 11 and *Orientalium Ecclesiarum*, 27. Regarding this last conciliar document, it is necessary to indicate that the eastern churches, in normal situations, require that this sacrament be administrated in the Church. This manifests a particular

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2. "Buße und Krankensalbung," in *Handbuch der Dogmengeschichte*, hrsg. von M. SCHMAUS-A. GRILLMEIER-L. SCHEFFCZYK-M. SEYBOLD, BD. IV/ 3 (Freiburg-Basel-Vienna 1978), pp. 218–220; cf. G. GRESHAKE, "Letzte Ölung oder Krakensalbung? Plädoyer für eine differenzierte sakramentale Theorie und Praxis," in *Geist und Leben* 56 (1983), p. 122.

3. Ibid., pp. 123–124.

4. *Conciliorum Oecumenicorum Decreta*, (J.ALBERIGO-J.A. DOSSETTI-P.P. JOANNOU-C. LEONARDI-P. PRODI, Eds), 3rd ed. (Bologna 1973), p. 548.

5. Ibid., p. 667; cf. also F.R. MCMANUS, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. CORIDEN-T J. GREEN-D.E. HEINTSCHEL (New York 1985), pp. 702–703.

accent on its ecclesial dimension, and on the fact that the danger of death does not constitute an indispensable condition to receive it.[6] The Apostolic Constitution *Sacrosanctum Concilium* truly speaks of the danger of death, but does not make the administration of this sacrament conditional on said danger: "'Extreme Unction', which may also and more fittingly be called 'Anointing of the sick', is not a sacrament for those only who are at the point of death. Hence, as soon as anyone of the faithful begins to be in danger of death from sickness or old age, the fitting time for him to receive this sacrament has certainly already arrived" (*SC* 73). From this conciliar text arises the clear preference for the expression "anointing of the sick," based on the conviction that it is not a sacrament exclusively for those that are in immediate danger of death. Nevertheless, according to the conciliar teaching, it is inappropriate to indiscriminately anoint sick or aged people. For this reason, the Council decided that there would be two separate rites for the anointing of the sick and for the Viaticum, and that "a continuous rite shall be prepared in which the anointing is administered to a sick person after making a confession and before receiving Viaticum" (*SC* 74). The possibility of adapting the administration of this sacrament to the diverse situations of life is expressed in the following conciliar mandate: "The number of the anointings is to be adapted to the occasion, and the prayers which belong to the rite of Anointing are to be revised so as to correspond to the varying conditions of the sick who receive the sacrament" (*SC* 75).[7] These decisions by the Council were taken into consideration by the *SCDW* in the aforementioned *Ordo unctionis infirmorum*. Furthermore, in this ritual the possibility of a common administration of the sacrament during a liturgical ceremony is prevented, which certainly supposed a novelty in the Latin Church (RA 80–81).[8]

2. Nevertheless, the exact synthesis of the Catholic teaching in the sacrament of the anointing of the sick is contained in the dogmatic Constitution of the Church *Lumen Gentium*. Said Constitution represents the continuation of the teaching of the Magisterium in this matter, especially all that was manifested by the councils of Florence and Trent. The Vatican Council II—supporting its affirmations in many texts of the Scripture—establishes that by the sacred anointing of the sick and the prayer of the priests the whole Church commends those who are ill to the suffering and glorified Lord that he may raise them up and save them (cf. Jas 5:14–16). And indeed the Council exhorts them to contribute to the good of the people of God by freely uniting themselves to the passion and death of Christ (cf. Rom 8:17; Col 1:24; 1 Tm 2:11–12; 1 Pt 4:13) (cf. *LG* 11 b). And the new

6. L. GEROSA, "Krankensalbung," in R. AHLERS-L. GEROSA-L. MÜLLER, *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), p. 72.

7. Ibid., pp. 72–73.

8. Cf. L. GEROSA, "Krankensalbung," cit., p. 73; M. SALES, "Die Krankensalbung-Sakrament des hingegebenen Lebens," in *Communio* 12 (1983), p. 408.

Right of Anointing emphasized the teaching of the Council: "Hoc sacramentum praestat infirmo gratiam Spiritus Sancti, qua totus homo ad salutem adiuvatur, Dei fiducia sublevatur et adversus tentationes maligni anxietatemque mortis roboratur, adeo ut mala non solum fortiter tolerare sed etiam impugnare possit, et sanitatem si saluti eius spiritali expedierit, consequatur; praebet etiam, si necesse est, veniam peccatorum et consummationem Paenitentiae christianae" (no. 6).[9] The aforementioned passage is clearly related to the teaching of the Council of Trent, to which the Right of Anointing refers (cf. RA, *Praenotanda*, 6).

The quoted texts clearly emphasize the christological aspect of the sacrament, namely the union with the passion and the death of Christ. Sickness constitutes a specific possibility to participate—thanks to faith—in the sufferings and death of Christ. The light of faith allows for a deeper knowledge of the mystery of suffering and for this to be carried with a bold spirit. The words of Christ convince us of the meaning of suffering, and help us to understand how this can help us for our own salvation and for that of the world. A person of faith remembers the love that Christ has for one, Christ who comforts and heals the sick (cf. RA, *Praenotanda*, 1).[10]

The excerpts given also show the ecclesial dimension of the anointing of the sick. The entire Church participates in the administration of this sacrament, and the Church recommends the sick person to the suffering and glorified Lord, while the sick person augments the goods of the people of God (cf. *LG* 11). The Church helps the faithful in suffering, somehow "sacrifices" one's sickness and one's eventual death and offers him to the Lord.[11] "Infirmum... salvabit fides eius et Ecclesiae, quae Christi mortem et resurrectionem respicit unde suam efficacitatem sacramentum haurit..." (RA, *Praenotanda*, 7). The sickness, therefore, becomes a salvific reality. The sacrament of anointing helps the sick person to recuperate one's health when this is useful for one's salvation, fills him with trust in God, strengthens him before temptation, allows him to overcome the fear of death and also grants him—when necessary—remission of sins. In this way such sacrament is a complement to Christian penance and acts as a renewal of baptism before death (RA, *Praenotanda*, 6).[12] For the community of Christ's faithful, the salvific reality of this sacrament consists, among other things, in the fact that to receive it, the sick person must specifically carry out the "path of the Church" which announces salvation to everyone.[13]

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9. Cf. L. GEROSA, "Krankensalbung," cit., p. 73.
10. Cf. ibid., p. 75.
11. Cf. ibid., p. 76.
12. Cf. ibid., pp. 76–77; G. GRESHAKE, "Letzte Ölung oder Krakensalbung? Plädoyer für eine differenzierte sakramentale Theorie und Praxis," in *Geist und Leben* 56 (1983), p. 136.
13. JOHN PAUL II, Litt. Ap. *Salvifici doloris*, 3, in *AAS* 76 (1984), pp. 202–203.

Sickness and suffering, therefore, do not constitute values in themselves. Only faith in Christ and the union with Him and with His Church can give them their real meaning.[14] The sick person that receives the sacrament of the anointing is comparable to the faithful that assumes penance. The Council of Trent has made this analogy evident, in the dogmatic-canonical tradition.[15] For this reason the fifth sacrament, considered to be *sacramentum maius*, is regarded in the theological tradition as a complement to the sacrament of penance. The faithful that approaches the sacrament of penance gives testimony that Christian life should be a "perpetua paenitencia," while a sick person who is anointed gives an example of the fact that earthly life, from baptism to death, should be a continuous following of the life and death of Christ, in order to enter into a new life (cf. Rom 6:4). Both paths lead to the Eucharist, which is the source and at the same time the summit of Christian life (cf. *LG* 11 a).[16] All this indicates that the sacrament of the anointing of the sick should be interpreted in this doctrinal context.

3. In conclusion, the legislative regulation of the sacrament of the anointing of the sick, inspired in the Vatican Council II, determined by the liturgical point of view of the Right of Anointing, and made canonically clear in the new Code, constitutes one of the signs of pastoral care that the Church gives to each of Christ's faithful afflicted by sickness or who finds himself in old age. The current legislation does not solve all the normative problems related to the sacrament, and, therefore, requires an ulterior critical reflection and specific legislative proposals. Nevertheless, these norms play the roll of *ius salutis* for the sick, and show the respect and love with which the Church addresses their suffering and the danger that they run. Theologians and pastors have the duty to strive for the best possible integration of the problems of suffering, of sickness and of treatment in the salvific order of the Church. This is necessary for the administration of the sacrament of the anointing of the sick to contribute to the building and the expression of the ecclesial community, to express and reinforce the faith and to serve for the sanctification of all the faithful.[17]

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14. CZ. KRAKOWIAK, "Sens cierpienia i Êmierci w Êwietle liturgii sakramentu namaszczenia chorych i wiatyku," in *Cierpienie i Êmierç* (A.J. NOWAK ofm, Ed.) (Lublin 1992), p. 89.

15. Council of Trent, "Doctrina de sacramento extremae unctionis, Prooemium," in *Conciliorum oecumenicorum decreta*, cit., p. 710; cf. H. VORGRIMLER, "Buße und Krankensalbung," in *Handbuch der Dogmengeschichte*, hrsg. von M. SCHMAUS-A. GRILLMEIER-L. SCHEFFCZYK-M. SEYBOLD, BD. IV/ 3 (Freiburg–Basel–Vienna 1978), pp. 216–231; J. FEINER, "Die Krankheit und das Sakrament des Salbungsgebetes," in *Mysterium salutis*. Grundriß heilsgeschichtlicher Dogmatik, hrsg. von J. FEINER-M. LÖHRER, Bd. V (Zürich-Einsiedeln-Köln 1976), pp. 509–519; L. GEROSA, "Krankensalbung," cit., pp. 77–78.

16. L. GEROSA, "Krankensalbung," cit., p. 78.

17. Cf. M. COLLINS, "Das Römische Rituale: Krankenseelsorge und Krankensalbung," in *Concilium* 27 (1991), pp. 102–103; D.N. POWER, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 162; L. GEROSA, "Kirchliches Recht und Pastoral" (EXTEMPORALIA. Fragen der Theologie und Seelsorge, hrsg. von T. MAAS-EWERD-M. SEYBOLD, Bd. 9) (Eichstätt-Vienna 1991), p. 62–64.

998 **Unctio infirmorum, qua Ecclesia fideles periculose aegrotantes Domino patienti et glorificato, ut eos allevet et salvet, commendat, confertur eos liniendo oleo atque verba proferendo in liturgicis libris praescripta.**

The anointing of the sick, by which the Church commends to the suffering and glorified Lord the faithful who are dangerously ill so that he may support and save them, is conferred by anointing them with oil and pronouncing the words prescribed in the liturgical books.

SOURCES: c. 937; *SC* 73; *LG* 11; *PO* 5; PAULUS PP. VI, Ap. Const. *Sacram unctionem Infirmorum*, 30 nov. 1972 (*AAS* 65 [1973] 5–9); RA 5, 6

CROSS REFERENCES: cc. 836 et 840

COMMENTARY

Bronisaw Wenanty Zubert, ofm.

Introductory canon

1. In the juridical-canonical treatment of the sacrament of the anointing of the sick, the legislator uses the same scheme of subdivision of matter that is used in the rest of the sacraments. The introductory canon contains the synthesis of the component and essential doctrinal elements of the sacrament. In comparison with its parallel norm in *CIC*/1917 (c. 937), it is richer in theological content, and it assumes the terminological change observed in the title (see commentary on title V of *Liber* IV, pt. I). In this sense, the sacrament of the anointing of the sick is no longer the "sacrament of the dying." In this way, the legislator attempts to eliminate the prejudices that have attached themselves to this sacrament over the centuries, among the lay faithful and among the pastors.[1] A new understanding of the substance and of the consequences of this sacrament, according to the magisterium of the Church in the Council and after the Council, shows that it must serve the health and the sanctification of the

1. Cf. P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), pp. 176; K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 998/ 1; V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 239.

gravely sick individual. A correct presentation of the sacrament should take its biblical, theological, historical, liturgical, pastoral, and canonical importance into account.[2] Here, as is obvious, we are fundamentally limited to this last area of importance.

Pope Paul VI, in the Apostolic Constitution *Sacram Unctionem Infirmorum*, has presented the fundamental traits of its long and complex history.[3] The Pontiff observes that St. Mark sketches the establishment of the sacrament by Jesus Christ (Mk 6:13), while James announces it and recommends to the faithful: "Is anyone among you sick? Have the priests of the Church called and pray for him, anointing him with oil in the name of the Lord and the faithful prayer will save the sick man, and the Lord will make him rise up and if he has committed sins, these will be pardoned" (Jas 5:14–15).

2. Testimonials about the administration of the anointing of the sick have existed since ancient times. Liturgical tradition determined in many ways the parts of the body of the sick person that should be anointed with the sacred oil, and the words that should be pronounced at the same time. The following formula was consolidated in the medieval Roman Church: "Through this holy anointing, may the Lord, in His most clement mercy, forgive you, whatever your offense may be." The teaching of the Church about this sacrament is contained in the documents of the Ecumenical Councils of Florence, Trent and Vatican II. Pope Paul VI decided to modify the sacramental formula so that it would "more clearly show, adding the words of James, the effects of the sacrament."[4] And because in some regions, olive oil is difficult or impossible to obtain, he permitted the use of other types of vegetable oil. He also found it appropriate to simplify the same sacramental rite, regarding the amount of anointings and the parts of the body that should be anointed. The Pope has established the following procedure for the Latin rite: "the sacrament of the anointing of the sick is administered by anointing the forehead and hands with olive oil, or, depending on the circumstances, with another vegetable oil, which has been

2. Cf. V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," cit., p., 239; cf. A. CHAVASSE, *Du III-e siècle à la réforme carolinguienne. Études sur l'onction des infirmes dans l'église latine du IIe au XIe siècle* (Lyon 1942); C. ORTEMANN, *Le Sacrament des Malades* (Lyon 1971); J.L. LARRABE, *La Iglesia y el Sacramento de la Unción de los Enfermos* (Salamanca 1974); G. GOZZELINO, *L'Unzione degli Infermi. Sacramento della vittoria sulla malatìa* (Turin 1976); K. ROMANIUK, "Die Krankensalbung. Eine Bibeltheologische Studie," in *Communio* 12 (1983), pp. 413–419; Z. ALSZEGHY, "Die Anthropologie der Krankensalbung," in ibid., pp. 420–422; R. KACZYNSKI, "Die Feier der Krankensakramente. Für eine pastorale Praxis entsprechend der liturgischen Ordnung," in ibid., pp. 423–436; N. SURES, "Die Tugend vollendet sich in der Schwachheit," in ibid., pp. 437–443; H. URS VON BALTHASAR, "Geheimnis Tod," in ibid., pp. 444–446.

3. Ap. Const. *Sacram Unctionem Infirmorum*, November 30, 1972, in *AAS* 65 (1973), pp. 5–9

4. Ibid., p. 8.

duly consecrated,[5] pronouncing only once the following words: 'Through this Holy Anointing, may the Lord in his love and mercy help you with the grace of the Holy Spirit. May the Lord who frees you from sin save you and raise you up'." In urgent cases, only one anointing on the forehead is enough, or, when the particular situation of the sick person requires it, on any other part of the body—although preferably on the forehead—while the words of the formula are pronounced (cf. RA 23; c. 1000).[6]

3. Liturgical law establishes, in its particular details, the entire ceremony of the sacrament of the anointing. It also establishes the pastoral of the sick, generically defined in the indicated Apostolic Constitution and in the canon under analysis.

In this regard, the rites presented and promulgated in Decree *Infirmis* of the *SCDW* of 1972[7] are in effect. Barring cases of necessity (cf. c. 1000 § 1), they should be maintained in their entirety. These rites clarify the meaning of suffering and of sickness in the mystery of salvation (Decr. *Infirmis,* I, 1–4), regulate the administration of the sacrament of the sick (II, 5–31), establish the duties and services for the sick (III, 32–37), indicate the competencies of the bishops' conferences regarding appropriate adaptations (IV, 38–39) and those that correspond to the ministers (V, 40–41).[8] Pope John Paul II has dedicated his Litt. Ap. *Salvifici doloris* of February 11, 1984[9] to the mystery of suffering in human life.

The new sacramental formula, in contrast to the former one, expresses both the remission of sin as well as spiritual protection and help in the restitution of health.[10] The symbolism of the oil has its roots in the Old Testament and in the New Testament, and it expresses happiness and honor, consecration, treatment and exorcism. This third aspect is particularly manifest in the anointing of the sick: the recuperation of the health of the soul and of the body.[11] The Church does not admit sacramental automatism, and for that reason, the efficacy of the sacrament depends on the faith of the one who receives it and of the prayer of the Church. Anointing received with faith gives the strength necessary to identify with Christ, who suffers and is glorified.[12] The relationship between faith and the

5. Cf. *Ordo benedicendi Oleum catechumenorum et infirmorum et conficiendi Chrisma* (Typis polyglottis Vaticanis 1970), no. 3.
6. Ap. Const. *Sacram Unctionem infirmorum,* in *AAS* 65 (1973), p. 8.
7. *AAS* 65 (1973), pp. 275–276.
8. Cf. M. COLLINS, "Das Römische Rituale: Krankenseelsorge und Krankensalbung," in *Concilium* 27 (1991), pp. 93–103.
9. *AAS* 76 (1984), pp. 201–250; cf. V. DE PAOLIS, "Il sacramento dell' unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 242.
10. Cf. P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), p. 177; D.N. POWER, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 155.
11. Cf. V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," cit., p. 243.
12. Cf. ibid. Cf. also RA, 6–7.

sacrament—a question which is substantially identical to the problem of the subjective requirements to be able to receive it—constitutes an important point in the discussions of canonists and pastoralists. The administration of the sacraments presupposes an objective faith (faith in the Church) and a subjective faith, the so-called "assensus fidei" (cf. Rom 10:14–15). The ecclesiastical legislator, taking the teaching of the Vatican Council II into account (cf. *SC* 9) emphasizes the meaning of faith in the administration of the sacraments (cf. cc. 836, 840). Therefore, the pastors are bound to prepare the faithful and the community that has been entrusted to them, so that they can approach this sacrament fruitfully. Such application of the juridical norms that regulate its administration, and that are closely related to the prescribed liturgical actions, will be carried out in such a way that permits the liturgy of the anointing of the sick to help to sanctify human beings in Christ and in the adoration of God (cf. *SC* 10 b).[13]

13. Cf. L. GEROSA, "Krankensalbung," in R. AHLERS-L. GEROSA-L. MÜLLER, *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), pp. 81–82.

CAPUT I
De celebratione sacramenti

CHAPTER I
The Celebration of the Sacrament

999 **Praeter Episcopum, oleum in unctione infirmorum adhibendum benedicere possunt:**

1° qui iure Episcopo dioecesano aequiparantur;

2° in casu necessitatis, quilibet presbyter in ipsa tamen celebratione sacramenti.

The oil to be used in the anointing of the sick can be blessed not only by a Bishop but also by:

1° those who are in law equivalent to the diocesan Bishop;

2° in a case of necessity, any priest but only in the actual celebration of the sacrament.

SOURCES: c. 945; RA 21; *Ordo Benedicendi Oleum Catechumenorum et Infirmorum et Conficiendi Chrisma*, 3 dec. 1970, 8

CROSS REFERENCES: 209, 368, 381 § 2, 835 § 1, 847, 1004 § 1

COMMENTARY

Bronisaw Wenanty Zubert, ofm.

Blessing of the oil

1. Blessed oil must be use for the valid administration of the sacrament of the anointing of the sick. In normal cases, oil blessed ("rite benedictum"; cf. c. 937 *CIC*/1917) by the diocesan bishop on Holy Thursday during the Holy Chrism Mass is used. The use of oil blessed by the diocesan bishop has an ecclesial meaning: the bishop is the principal dispenser of the mysteries of God, and the moderator, promoter and custodian of all

liturgical life in the particular church which has been entrusted to him (cf. c. 835 § 1; RA, *Praenotanda*, 1–2).[1] For this reason, ecclesiastical "communio" is carried out in a very specific way, and all Christ's Faithful are bound to observe it (cf. c. 209), so that they may enjoy the fruits of the salvific Passion and of the Resurrection of Christ.[2] However, this perspective of the blessing proves to be problematic in the context of current pastoral and liturgical practice. The legislator also admits the possibility of using oil that has been blessed by another bishop, as well as by those who are in law equivalent to the diocesan bishop (cf. cc. 368, 381 § 2).

2. Priests constitute the second group of ministers authorized to bless the oil. *CIC*/1917 established in c. 945 that a priest could bless the oil of the sick: "qui facultatem illud benedicendi a Sede Apostolica obtinuerit." Currently, on the contrary, any priest may bless it, but only in a case of necessity and only during the administration of the sacrament. Blessing should be carried out according to the provided rite.[3] From the text of the canon, it seems lawful to conclude that this last possibility has an exceptional sense to it, and that it can only be carried out when oil that has been blessed by a bishop is not available.

The practice of blessing the oil in the administration of the sacrament is taken from non-Roman rites, and is comparable to the blessing of water for baptism during its administration. During the liturgical reform, especially in the reform of the ritual, the tendency existed to unify the blessing of the matter of the sacrament with its administration, as is clearly shown in the rites of baptism. Regarding the anointing of the sick, such rule has not been applied, but a reflection of such is found in the *Ordo*, in the prayer of thanksgiving for the oil (RA, 75 i, 80).[4] For this reason, Power makes a critical reflection on the meaning of keeping a conceptual fiction: prayer of blessing and prayer of thanksgiving. An analysis of the respective contents shows insignificant differences. For this reason, one may ask if there are sufficient grounds, in the ecclesiological and sacramental aspects, to bind the sacrament of the sick to the pastoral function of the bishop, given that the annual blessing of the oil of the sick has turned into a pure formality, without anything in common with real sacramental service for the sick. Certainly, the apparently simple question regarding the

1. Cf. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. Coriden-T J. Green-D.E. Heintschel (New York 1985), p. 704; D.N. Power, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 155.

2. Cf. L. Gerosa, "Krankensalbung," in R. Ahlers-L. Gerosa-L. Müller, *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), p. 75.

3. Cf. RA, 21 b; *Ordo benedicendi Oleum catechumenorum et infirmorum et conficiendi Chrisma* (Typis polyglottis Vaticanis 1970), no. 8.

4. D.N. Power, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 155; F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. Coriden-T J. Green-D.E. Heintschel (New York 1985), p. 705.

matter of the sacrament originates problems that require further and more profound ecclesiological reflection.[5]

3. A priest may bless oil "in case of necessity." The legislator does not define, however, the nature or the degree of such necessity. It is lawful, therefore, to assume that the same minister should evaluate the specific situation, keeping in mind that it should be a question of "vera necessitas" (RA, 21 b). But it seems that the "case of necessity" cannot only be limited to the danger of death. Such a restricted consideration would be in disagreement with *cum mente legislatoris* and would not correspond to the current pastoral reality. It would also contradict the disposition of c. 1004 § 1, which permits the repetition of the anointing of the sick. In any case, according to the *Ordo*: "...Oleum benedicendum potest aut ab ipso presbytero deferri aut a familiaribus infirmi in vasculo convenienti parari. Quod vero post celebrationem supererit Olei benedicti, addito bombacio igne comburatur" (RA, 22).

The expression "in ipsa celebratione sacramenti" was added to complement and explain the sense of the text, given that, other than the diocesan bishop and the juridical equivalent, practically no one may bless the oil for the sick outside of the administration of the sacrament.[6]

5. D.N. POWER, "Das Sakrament...," cit., pp. 155–156.

6. Cf. F.R. MCMANUS, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. CORIDEN-T J. GREEN-D.E. HEINTSCHEL (New York 1985), p. 705.

1000 **§ 1. Unctiones verbis, ordine et modo praescriptis in liturgicis libris, accurate peragantur; in casu tamen necessitatis, sufficit unctio unica in fronte vel etiam in alia corporis parte, integra formula prolata.**

§ 2. Unctiones peragat minister propria manu, nisi gravis ratio usum instrumenti suadeat.

§ 1. The anointings are to be carried out accurately, with the words and in the order and manner prescribed in the liturgical books. In a case of necessity, however, a single anointing on the forehead, or even on another part of the body, is sufficient while the full formula is recited.

§ 2. The minister is to anoint with his own hand, unless a grave reason indicates the use of an instrument.

SOURCES: § 1: c. 947 § 1; *Rituale Romanum*, ed. typica 1925, Tit. VI, c. 2, 11; *SC* 75; RA 23, 24
§ 2: c. 947 § 4

CROSS REFERENCES: —

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Manner of administering the sacrament

This canon regulates the material dimension of the administration of the sacrament of anointing (§ 1), and the way in which it is to be carried out (§ 2).[1] The legislator refers again to liturgical law, which urges respect for the words, the order and the manner prescribed in the liturgical books.

1. The liturgical norms that refer to the number of anointings, as well as the parts of the body that should be anointed, have been simplified. For this reason, the casuistry and minuteness that fatigues modern man and that has frequently, in the past, obscured the theological and pastoral sense of this sacrament, has disappeared. Even in the Roman Ritual of 1614, the anointing of the eyes, ears, nose, lips, hands, feet and kidneys is prescribed. It may be c. 947 § 2 of *CIC*/1917 that establishes that "Unctio renum semper omittatur." The promulgation of the Ritual of 1925, in turn, permitted the omission of the anointing of the feet, in accordance with that which is established in c. 947 § 3 of *CIC*/1917 ("Unctio pedum ex qualibet

1. Cf. V. DE PAOLIS, "Il sacramento dell' unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 244.

rationabili causa omitti potest"). On the contrary, the meaning of the anointing of the hands has been emphasized, because its origin and symbology are bound to the New Testament (cf. Mk 6:5: "... he laid his hands upon a few sick people and healed them"; Lk 13:13: "... and he laid his hands upon her, and immediately she was made straight, and she praised God").[2]

The Vatican Council II also requested that this matter be reformed, and established that "the number of the anointings is to be adapted to the occasion" (*SC* 75). The Right of Anointing of Paul VI took this suggestion by the Council into account, and limited the number of anointings to two, on the forehead and the hands of the sick person, indicating that in case of necessity, the anointing on the forehead is sufficient (no. 23). The same ritual also states: "Nihil tamen impedit quominus, ingenio et traditionibus populorum attentis, numerus unctionum augeatur aut earum locus mutetur, quod previdendum erit in Ritualibus particularibus conficiendis" (no.4).

2. The legislator has assumed these liturgical prescriptions and has generally expressed them in this canon. Considering the aforementioned modification, it should be noted that this canon—in its contents and in its formulation—is almost identical to the parallel canon in *CIC*/1917 (c. 947 § 1), as well as the successive canons' *schemata*, previous to *CIC* (c. 189 *Schema* "De sacramentis 1975," c. 954 *Schema* "*CIC* 1980," and c. 1001 *Schema* "*CIC* 1982").[3]

The "necessity" which the legislator mentions as the basis for the limitation on the anointing to the forehead or another part of the body, may be due to many different circumstances. For example, due to eminent danger of death, in which the shorter rite is used; due to a physical obstacle to the anointing of the hands; due to a large number of sick to whom the sacrament still must be administered at the same time, while respecting the entire rite, etc.[4] In the canonical aspect, it must be emphasized that, for the validity of the sacrament, only one anointing is sufficient, preferably on the forehead, and pronouncing the sacramental formula.[5]

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2. Cf. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 705; *Rituale romano-seraphicum Ordinis Fratrum Minorum*, 3rd ed. (Rome 1950), tit. II, ch. III, *De sacramento extremae unctionis*, pp. 21–22.

3. Cf. respectively: *Schema documenti pontificii quo disciplina canonica De sacramentis recognoscitur* (Rome 1975); *Schema Codicis Iuris Canonici*, Libreria Vaticana 1980; *Codex Iuris Canonici. Schema novissimum*, Civitas Vaticana 1982.

4. Cf. F.R. McManus, "The Sacrament of the Anointing...," cit., p. 705.

5. Cf. ibid.; also V. de Paolis, "Il sacramento dell' unzione...," cit., p. 244; K. Lüdicke, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. Lüdicke (Essen 1985), c. 1000/1; E. Sztafrowski, "Odnowione przepisy prawnoliturgiczne sakramentu namaszczenia chorych," in *Prawo kanoniczne* 19 (1976), pp. 68.

3. The manner of administering the sacrament of anointing is very specifically regulated by the Right of Anointing, (64ff), distinguishing the ordinary rite (anointing in the home of the sick person or in the hospital) from the rite performed during Mass (nos. 80–82). The minister should know the subjective condition of the sick person, and consequently, choose the readings of the Holy Scripture, and the most suitable prayers. In choosing the readings, he must remember that they should mean—for the sick person and for those present—the Good News that may be received as the word of God that leads to faith, hope, trust and love.[6] Such particularities should be considered with the sick person and with their family. This personal aspect of sacramental service, which lacks routine and stereotyped behaviors, may have an important influence on the fruitful way in which the sacrament is received and on the understanding of its meaning by those who participate in this celebration.

4. According to § 2 of the canon, the minister should give the anointing of the sick by direct physical contact with the body of the sick person, touching the indicated parts of the body with his own hand. Only a serious reason would justify the use of an instrument. The commentators on the Code agree that a grave reason would be the danger of infection to the minister and also extreme repugnance. In such cases, however, the minister should use the same precautionary means against infection that are used by medical and sanitary personnel.[7] Excessive fear in the administration of the sacrament would be out of place; the minister must remember that this attitude could hurt the dignity of the person who is suffering, who is at an old age or who is close to death. The Church teaches that the light of faith permits the Christian to more deeply know the mystery of suffering and to live through it bravely. The Church also encourages the sick not to forget that they are loved by Christ, who visited and cured the sick, while others distanced themselves from or avoided them. A man who suffers is part of the communion of the faithful, who are called to give him help (RA, 1).[8] "Not only should the sick person fight against their sickness, but doctors and all those who are in any way related to the sick person should also consider what they can do, examine or try to bring the sick physical and spiritual help" (RA, 3). For this reason, the minister of this sacrament—conscious that "a gravely sick person needs a special grace of God, so that he does not give up because he is discouraged, nor lose faith because he is tormented by temptations" (RA, 5)—cannot adopt an attitude that is distant, too prudent, that makes it difficult for the sick person

6. Cf. M. Collins, "Das Römische Rituale: Krankenseelsorge und Krankensalbung," in *Concilium* 27 (1991), p. 94.

7. Cf. *Comm.* 9 (1977), p. 341; F.R. McManus, "The Sacrament of the Anointing...," cit., p. 706.

8. Cf. M. Collins, "Das Römische Rituale...," cit., p. 100.

to feel the love of Christ and his proximity in the sacramental ministry.[9] In judging the reasons on which the act of anointing with an instrument is based, the minister must certainly take into consideration not only hygienic-medical reasons, but also and especially pastoral ones, the state of psychic conscience of the sick person and all other circumstances under which the sacrament is administered.

9. Cf. ibid.

1001 **Curent animarum pastores[1] et infirmorum propinqui, ut tempore opportuno infirmi hoc sacramento subleventur.**

Pastors of souls and those who are close to the sick are to ensure that the sick are helped by this sacrament in good time.

SOURCES: c. 944; *SC* 73; RA 13, 43

CROSS REFERENCES: 1004–1005

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Those responsible for the administration of the sacrament in the proper time

This canon does not have a direct precedent in *CIC*/1917, although c. 944 of the *CIC*/1917 also expressed that it is necessary for the sacrament of the anointing to be administered with the following words: "...omni studio et diligentia curandum ut infirmi, dum sui plene compotes sunt, illud recipiant." The interpretative context of such disposition was different, however, given that *CIC*/1917 regulated in a different way the issue of the person to whom the sacrament is to be given. The doctrinal source of the current norm is a disposition of the Vatican Council II, that has established that "as soon as anyone of the faithful begins to be in danger of death from sickness or old age, the fitting time for him to receive this sacrament has certainly already arrived" (*SC* 73). This expression by the Council, as has already been stated, has a fundamental influence on the contemporary theological understanding of this sacrament, in pastoral practice and in the current ecclesiastical discipline in this matter. Even in the *Schema* "De sacramentis" of 1975, c. 944 of *CIC*/1917 was faithfully repeated, in which it was expressly proven that it is not a necessary sacrament with "necessity as means" (*necessitas medii*) for salvation. This explanation corresponded to the sacramental theology of that time. Currently, the theological meaning is expressed in c. 998. For this reason, the *Schema* of 1980 (c. 955) and the *Schema* of 1982 (c. 1002) now include the current version of the canon.

The legislator establishes the duty to ensure that the sacrament be administered in "good time," specifying this moment in more detail in

1. Cf. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 706.

cc. 1004–1005.[2] The obligation contained in this norm should prevent the sacrament of the sick from being considered to be the sacrament of the dying. To judge the time of anointing as the last moment of life would instill fear and would provoke confusion among the faithful. If it is to help the health of the body and of the spirit, it is more appropriately administered beforehand.[3] The subjects of the juridical duty mentioned in this norm are the pastors and those who are close to the sick person. Due to their ministry, pastors are the administrators of the means of salvation and, therefore, the juridical basis of their duty seems evident. Those who are close to the sick person are understood to be relatives, friends, or those who have taken care of the sick person during his illness (doctors, nurses): all these people are committed to this care in the name of Christian love.[4] De Paolis is correct in emphasizing the need to renew the catechesis on the meaning of this sacrament and to instruct people in its nature, especially those who care for the sick.[5] Those who are dedicated to the pastoral of the sick must fulfill important obligations: they must show the faith of the Church in a dialogue with human hope, with fear and expectation.[6]

The canon does not mention the duty of the sick person to request the sacrament of anointing. Such duty derives from faith and from belonging to the Church, in that, all Christ's faithful are obligated to request and receive the means of salvation and of sanctification given by God through the Church. The *Ordo* also reminds that "In catechesi ... tradenda fideles *ita instituantur ut ipsi Unctionem expetant et statim* ac tempus opportunum illam recipiendi datum fuerit, plena fide animique devotione suscipiant, neve pravo usui sacramenti procrastinandi indulgeant" (RA 13).[7] The possibility of receiving the anointing "plena fide animique devotione" constitutes a decisive criterion in the determination of the "tempus opportunum" (RA 13).

2. Cf. ibid.

3. Cf. V. DE PAOLIS, "Il sacramento dell' unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 245.

4. Cf. ibid.; also K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 1001/ 1; F.R. MCMANUS, "The Sacrament of the Anointing...," cit., p. 706.

5. V. DE PAOLIS,"Il sacramento dell' unzione...," cit., p. 245.

6. Cf. M. COLLINS, "Das Römische Rituale: Krankenseelsorge und Krankensalbung," in *Concilium* 27 (1991), pp. 94 and 101.

7. Cf. V. DE PAOLIS, "Il sacramento dell'unzione...," cit., p. 245; K. LÜDICKE, "Das Heiligungsamt der Kirche...," cit., c. 1001/ 1.

1002 **Celebratio communis unctionis infirmorum, pro pluribus infirmis simul, qui apte sint praeparati et rite dispositi, iuxta Episcopi dioecesani praescripta peragi potest.**

The communal celebration of anointing of the sick, for a number of the sick together, who have been appropriately prepared and are rightly disposed, may be held in accordance with the regulations of the diocesan bishop.

SOURCES: RA 17, 83

CROSS REFERENCES: cc. 837 § 2, 835 § 1, 838 § 4, 843 § 1, 883,3°, 921 § 1, 987, 1000, 1001

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Communal celebration of anointing of the sick

1. The norm included in this canon is totally new. One will not find an analogous norm in *CIC*/1917, or in the many *schemata* previous to *CIC*. The proposal to finish c. 954 (*Schema* 1980) with the paragraph "de celebratione communitaria huius sacramenti" was judged negatively regarding "sufficiunt ea quae in Ordine liturgico habentur."[1] The canon has been written, therefore, with consideration of the current liturgical laws, which anticipate the communal anointing of the sick (RA, 83–92), while the individual administration remains—in accordance with c. 1000—the normal form of administrating the sacrament. It would be inappropriate to identify the communal administration of the sacrament with that which is given to one or more sick people together in a small community of faithful (for example, the family, acquaintances, etc.) who actively participate in the communal celebration of the sacrament (cf. c. 837 § 2).[2] A model of the liturgical formula in question is the communal administration of anointing which takes place during the numerous pilgrimages of the sick in the shrine, where in 1969 this rite was introduced experimentally.[3] This form, however, somehow strays from the conception of continuous pastoral care of the sick anticipated in 42–48 of the *Ordo*,[4] among others.

1. *Comm.* 9 (1977), p. 341; 15 (1983), pp. 214–215.
2. Cf. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 706.
3. Cf. ibid.; also M. Collins, "Das Römische Rituale: Krankenseelsorge und Krankensalbung," in *Concilium* 27 (1991), p. 95.
4. Cf. ibid.

2. In the case of a communal administration of the anointing, "Ad Ordinarium loci pertinet moderatio illarum celebrationum in quibus forte infirmi diversarum paroeciarum vel valetudinariorum ad accipiendam sacram Unctionem adunantur" (RA, 17). There are more particular norms in the ritual, in the part entitled "De celebratione Unctionis in magno coetu fidelium." The first part emphasizes that a communal rite can be used—with the permission of the local ordinary—if a great number of faithful on the occasion of pilgrimages, meeting with the faithful of a diocese, city, or parish, or of a pious association of sick. A communal rite may also be used in hospitals. The local ordinary, or one of his delegates, should watch over the exact respect for the norms referred to, the way in which anointing is administered, the pastoral preparation, and the liturgical ceremony. A communal anointing must be performed in the church or in another suitable place, where the sick and the faithful can easily congregate. The sick who receive the sacraments, as well as other sick people and the rest of the faithful who participate in the ceremony, should receive preceding pastoral preparation in order to feel total participation, which expresses paschal happiness due to this salvific occurrence (cf. RA, 83–84). Two common rites have been established: "extra missam" and "intra missam" (cf. RA, 86–92), everything seems to indicate that the precept of approaching the sacrament of penance before the rite of anointing should be kept, *servatis servandis* in both cases.

3. In this canon, the legislator has expressed the aforementioned contents of the liturgical norms in an abbreviated legislative way. The communal administration is conditional upon the fulfillment of some objective and subjective requirements. The former include not only the permission of the diocesan bishop, but also the respect for the prescriptions of this matter. From here it follows that the pastors are not permitted to organize a communal anointing without speaking with the bishop first. The bishop, in turn, should give suitable dispositions, if he judges it to be useful for the sick of a particular church (cf. cc. 835 § 1; 838 § 4).[5] Among the subjective requirements that should be respected in a communal ceremony are adequate preparation and the right inner disposition of the sick. It can be admitted that in this decision of the canon, in a slightly modified way, the juridical duty imposed on the pastors and on those who are close to the sick in c. 1001 has been repeated. This is true, even when the need to specifically prepare the sick for a communal ceremony cannot be denied. By its nature, such a communal ceremony would be denied the intimacy of interpersonal relationships, characteristic of an individual celebration. Therefore, a communal ceremony does not exempt the pastors from an

5. Cf. E. SZTAFROWSKI, "Odnowione przepisy prawno-liturgiczne sakramentu namaszczenia chorych," in *Prawo kanoniczne* 19 (1976), pp. 76; P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), pp. 179.

adequate preparation for each one of the sick.[6] Moreover, the requirement of an adequate inner disposition is not specific to this sacrament, given that said disposition is always required in the person who requests and receives a sacrament, except in the case of baptism of infants (cf. c. 843 § 1; and, e.g., c. 987).

4. At least two "liturgical agendas" belonging to the Polish diocese, the one belonging to Katowice and the one belonging to Opole, anticipate the possibility of a communal administration of the sacrament of anointing. In accordance with these particular liturgical norms, at least once a year—preferably on July 6 (the holy day of Our Lady of health of the sick)—the Day of the Sick must be organized in each parish. In accordance with a decision made by the bishop of Katowice, on this day, during Holy Mass, the sacrament of anointing can be administered to those sick who wish to receive it. Such people should go to the secretary of the parish beforehand, if there are no specific prescriptions regarding the way in which one should prepare oneself to receive the sacrament, to register himself or herself in the book of the sick.[7] The bishop of Opole has given, on the contrary, general permission to administer anointing—also during the annual Day of the Sick—to those who have been seriously sick for a long time and who have still not received the sacrament during this same illness.[8] This "agenda" does not contain any more precise indications as to the preparation of the sick. The choice as to the way in which each sick person who receives anointing will be prepared belongs to the pastors who are entrusted with pastoral care for the sick.

5. In this context, an issue is posed which is not regulated directly by the Code: it is a question of the administration of the sacraments to a sick person who is "in proximo mortis periculo," in relation to the application of the continued rite of penance, anointing and viaticum. This rite has been introduced "quo facilius etiam casibus peculiaribus prospiciatur, quibus aut ex morbo repentino aliisve de causis fidelis in próximo mortis periculo quasi ex improviso constituatur" (RA, 30). The three sacraments indicated here should be administered in such a case in the order established by the ritual. Therefore, the sick person should first be given the possibility of giving a sacramental confession (for the remission of sins), then the administration of anointing (to fortify him and to entrust him to Christ who suffers and who is adored) and lastly, be given the Viaticum (sacrament of love and of life in community with God and with the

6. Cf. V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 245.

7. *Naboêefstwa diecezji katowickiej*. Agenda litrugiczna, oprac. zbiorowe Diecezjalnej Komisji Liturgicznej (Katowice 1987), p. 348.

8. *Agenda liturgiczna diecezji opolskiej*. Naboienstwa, powicenia i bogosawiestwa. Wydanie studyjne, oprac. zbiorowe Diecezjalnej Komisji Liturgicznej (Opole 1981), p. 350.

brothers of faith).[9] Due to an imminent danger of death, it may not always be possible to respect this order. In such a case, the possibility of the sacramental confession must be facilitated first; then the sick person should be administered the Viaticum, which every faithful is bound to receive when in danger of death (cf. RA, 30; c. 921 § 1); and when time permits, the anointing should be administered. On the contrary, if the faithful is not in conditions to receive the Viaticum, due to the illness, anointing should be administered (cf. RA, I b).

This ceremony also anticipated the possibility of administering the sacrament of confirmation (RA, 31, 117, 124, 136–137), although it emphasizes that the sacraments of anointing and of confirmation should not be administered one immediately after another. This would permit, in fact, the possibility of diluting the difference between the two sacraments in which the anointing with oil is performed. If, however, it is urgent to administer both sacraments, confirmation should be celebrated first, and anointing should be celebrated second. During said anointing, the imposition of the hands on the head of the sick person is to be omitted (RA, 31).[10] Regarding the administration of the sacrament of confirmation under such circumstances, it is necessary to abide by the disposition of c. 883, 3° (cf. RA, 31).

9. Cf. V. DE PAOLIS, "Il sacramento dell' unzione...," cit, p. 246.

10. Cf. E. SZTAFROWSKI, "Odnowione przepisy prawno-liturgiczne sakramentu namaszczenia chorych," in *Prawo kanoniczne* 19 (1976), pp. 76; P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), pp. 179.

CAPUT II
De ministro unctionis infirmorum

CHAPTER II
The Minister of Anointing of the Sick

1003 **§ 1. Unctionem infirmorum valide administrat omnis et solus sacerdos.**

§ 2. Officium et ius unctionis infirmorum ministrandi habent omnes sacerdotes, quibus demandata est cura animarum, erga fideles suo pastorali officio commissos; ex rationabili causa, quilibet alius sacerdos hoc sacramentum ministrare potest de consensu saltem praesumpto sacerdotis de quo supra.

§ 3. Cuilibet sacerdoti licet oleum benedictum secumferre ut, in casu necessitatis, sacramentum unctionis infirmorum ministrare valeat.

§ 1. Every priest, but only a priest, can validly administer the anointing of the sick.

§ 2. All priests to whom has been entrusted the care of souls, have the obligation and the right to administer the anointing of the sick to those of the faithful entrusted to their pastoral care. For a reasonable cause, any other priest may administer this sacrament if he has the consent, at least presumed, of the aforementioned priest.

§ 3. Any priest may carry the holy oil with him, so that in a case of necessity he can administer the sacrament of anointing of the sick.

SOURCES: § 1: cc. 938 § 1, 939; RA 16
§ 2: cc. 938 § 2, 939; RA 16, 18
§ 3: SCRit Decr. *Pientissima Mater*, 4 feb. 1965 (*AAS* 57 [1965] 409); *SCCong* Directorium *Peregrinans in terra*, 30 apr. 1969, II, B, b (*AAS* 61 [1969] 375)

CROSS REFERENCES: —

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Minister of the anointing of the sick

1. The legislator only dedicates one canon to the question of the minister of the sacrament of anointing (*CIC*/1917 regulated it in cc. 938–939). In this canon, the legislator establishes that only priests may validly administer this sacrament; that those priests to whom the pastoral care of a determined community of faithful has been entrusted have the obligation and the right to administer it; and that any priest may administer it, if he has the consent, at least presumed, of the aforementioned priest. Finally, § 2 establishes that any priest is authorized to carry the holy oil with him.[1]

2. The writing of § 1 has not been easy. In the critical notes on c. 956 in *Schema* 1980, it was proposed that the words "valide" and "omnis et solus" be omitted. Historical reasons were used to argue that this norm—at least for the first eight centuries of Christianity—should not be accepted; and even the Council of Trent speaks only of "ministro 'proprio'." Therefore, the following conception of the norm was proposed: "Minister proprius unctionis infirmorum est sacerdos." In response, it was only said that "melius est ut retineatur textus, ex c. 938 § 1 CIC desumptus," but no worthy argument was given for said "melius."[2] In the documentation on which the norm is based (*CIC*/1917 and *CIC*), the decision of the Council of Trent and no. 6 of Right of Anointing are used as the historical justification for this disposition. Nevertheless, it is useful to indicate the conception that was held at that time of "extreme unction" that was administered together with the sacrament of penance, a fact that probably influenced the Tridentine norm.[3] McManus' opinion is that the current norm excludes the possibility of the sacrament of anointing being administered by deacons. This was requested by the representatives of the particular churches of the United States, the Federal Republic of Germany, and other countries, and was vividly argued, in post-conciliar theology and between the consultors that were part of the preparation of the successive *schema* of

1. Cf. V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 246.

2. *Comm.* 7 (1975), p. 36; 15 (1983), p. 215; cf. F.R. MCMANUS, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary,* J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHEL (New York 1985), p. 707.

3. Council of Trent, *Sess.* XIV, *Doctrina de sacramento unctionis*, ch. 3; *Canones de sacramento extremae unctionis*, c. 4: *Conciliorum oecumenicorum decreta* (J. ALBERIGO-J.A. DOSSETTI-P.P.JOANNOU-C. LEONARDI-P. PRODI, Eds) (Bologna 1973), p. 710 and 713; cf. V. DE PAOLIS, "Il sacramento dell'unzione...," cit., p. 246; D.N. POWER, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 156.

the Code.[4] The cited author supports the idea that the solution of the Code regarding the question of the minister must maintain the relationship between the sacrament of anointing and the letter from James (St 5, 14). He adds that the Council of Trent's anathema is only meant for those who maintain the lay faithful ("aetate seniores in quavis communione") can administer this sacrament. It must be critically added that in the Tridentine canon only the "solus sacerdos" is considered to be "minister proprius," which indirectly shows that the deacon does not possess the power to validly administer anointing. We could therefore agree with McManus' opinion that the Council of Trent did not directly resolve the question of the validity of the anointing administered by a deacon, but it must be added that such a solution would be useless, due to the expression "solus sacerdos."[5]

The Instruction *Ecclesiae de mysterio* of August 15, 1997also alludes to the issue of the administration of the anointing of the sick.[6] Art. 9 § 1 indicates, first, that the lay faithful can offer valuable collaboration in the field of the pastoral activity for the sick, given that they themselves are found in the front line in the world of pain and illness and care for the sick in the their gravest moments.[7] Nevertheless, it notes that, "since they are not priests, in no instance may the non-ordained perform anointings either with the Oil of the Sick or ony other oil."[8] The paragraph unequivocally states: "With regard to the administration of this sacrament ... the priest is its only valid minister."[9] No other can be considered an ordinary or extraordinary minister of the sacrament, and any action contrary to this principle would constitute simulation of the sacrament.[10] It should be stressed that although the Instruction has been specifically approved by the Pope and as a result, according to PB 18, it has the force of law, in the area of the anointing of the sick it merely urges exact compliance with

4. Cf. *Comm.* 9 (1977), p. 342–343; F.R. McManus, "The Sacrament of the Anointing...," cit., p. 707; O. Stoffel, "Die Krankensalbung," in *Handbuch des katholischen Kirchenrechts*, hrsg. von J. Listl-H. Müller-H. Schmitz (Regensburg 1983), p. 714; A. Ziegenaus, "Ausdehnung der Spendevollmacht der Krankensalbung," in *Münchener Theologische Zeitschrift* 26 (1965), p. 345–363; Ph. Roillard, "Le ministre du sacrement de l'onction des malades," in *Nouvelle Revue Théologique* 111 (1979), p. 395–402; A. Triacca, "La Chiesa e i malati: 'Fedeltà' a Christo e 'adattamento' alle nuove situazioni storiche," in *Il sacramento dei Malati* (Quaderni di Rivista Liturgica, Nr. 2, Turin 1975), pp. 58–74.

5. Cf. F.R. McManus, "The Sacrament of the Anointing...," cit., p. 707.

6. AAS 89 (1997), 852–877.

7. Art. 9 § 1. The authors of the instruction invoke OUI, *Praenotanda*, 17. The functions of the lay faithful are described in the following terms: "The non-ordained faithful particularly assist the sick by being with them in difficult moments, encouraging them to receive the Sacraments of Penance and the Anointing of the Sick, by helping them to have the disposition to make a good individual confession as well as to prepare them to receive the Anointing of the Sick" (art. 9 § 1). However, it adds: "The non-ordained faithful should ensure that these are in no way regarded as sacraments whose administration is proper and exclusive to the Bishop and to the priest" (ibid.)

8. Art. 9 § 1.

existing laws; that is, it fulfills the administrative function of instructions, according to their juridical nature (cfr c. 34).

Any priest who has been validly ordained always administers the sacrament of anointing validly. His current juridical state in the Church—for example, his ecclesiastical responsibilities, or he who has incurred an ecclesiastical penalty—has no influence over the validity of the administration of the sacrament of anointing. Any juridical limitation exclusively refers to the suitability of the sacramental action.[11]

3. In § 2 of this canon, those who are bound and authorized to give anointing are indicated. These are all priests to whom the pastoral care of a determined community of faithful has been entrusted. The Right of Anointing expressly names bishops, parish priests and their collaborators, priests to whom the care of the sick and the old in hospitals have been entrusted, superiors in seminarian communities, and superiors in communities of clerical institutes. All those normally fulfill this sacramental service (RA 16), which is constituted as a juridical duty ("ex iustitia": cf. c. 939 *CIC*/1917).

Canon 530, 3° includes the administration of anointing of the sick among the functions especially entrusted to the parish priest. The current liturgical precepts (cf. c. 2) broadened the field of ministerial service to which the aforementioned ministers were bound. This establishes that it is their obligation to prepare the sick, with the help of both the religious and lay faithful. It also indicates that the local ordinary must preside over the liturgy in which the faithful congregate to receive anointing together. If two or more priests participate in the rite of anointing of one sick person, one may pray, pronouncing the formula, and the others may divide the other parts of the rite between themselves. These include the initial rites, the reading of the word of God, invocations, exhortations, and the authorization of each to impose their hands. It also reminds that the priests who administer the sacrament with the consent, at least presumed, of the

9. Art. 9 § 1; cf. also c. 739 § 1 *CCEO*. The Instruction justifies this provision: "ecclesiastical legislation reiterates the theologically certain doctrine and the age-old usage [of the sacrament] in the Church" (art. 9 § 2). At the same time, it adds: "It must also be affirmed that the reservation of the ministry of Anointing to the priest is related to the connection of this sacrament to the forgiveness of sin and the worthy reception of the Holy Eucharist" (ibid.). In the list of sources, the Instruction mentions: St 5, 14–15; S. THOMAS, *In IV Sent.*, d. 4, q. un., Conc. Oecum. Trid., *Doctrina de sacramento extremae unctionis*, cap. 3 et can. 4 *de estrema unctione*; *Catechismus Catholicae Ecclesiae*, 1516 and c. 1003.

10. Art. 9 § 2. The note refers to the penal norm of c. 1379, which for the crime of simulation of the administration of the sacraments orders an undetermined sentence ("iusta poena puniatur") and to c. 392 § 2, which establishes that the bishop "is to ensure that abuses do not creep into ecclesiastical discipline, especially concerning ... the celebration of the sacraments ..."

11. Cf. K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz* (Essen 1985), c. 1003/ 1.

priest to whom the care of souls has been entrusted, must inform the parish priest of the chaplain of the hospital (RA, 16–19).[12]

4. Priests to whom has not been entrusted the care of souls are bound *ex sacerdotio ministeriali* to administer this sacrament ("ex caritate": cf. c. 939 *CIC*/1917). Considering the *salus animarum*, the Code does not require excessive conditions: it is enough that the "rationabilis causa" and the "consensus saltem praesumptus" be present in specific situations. Presumed consent should not, however, originate a useless repetition of the sacrament, without prejudice to that which is established in c. 1004. Ministers of non-Catholic churches, in which the sacrament of anointing of the sick is validly administered, may also administer it to the Catholic faithful, under certain conditions (cf. c. 844 § 2; *OE* 27).[13]

5. The norm in c. 946 of *CIC*/1917 on the way and place in which the oil of the sick should be kept has been omitted in the current Code. Such matter has been generically regulated in c. 847 § 2. The prohibition of the parish priest keeping oil in his home is no longer standing (cf. cc. 946 and 735 *CIC* 7). The Apostolic See, on February 4, 1965, authorized local ordinaries to permit priests to carry the oil of the sick with them.[14] Currently, no type of permission is required, since c. 1003 § 3 authorizes all priests to carry blessed oil with them, in order to administer the sacrament in case of necessity; in this situation, the priest may also bless the oil (cf. c. 999,2°). The priest who makes use of this right must keep the oil in a container made of a suitable material that is clean, in which enough oil may be kept, and dissolved, for practical reasons, in cotton. This practical norm is meant to make it possible for any priest to administer sacramental anointing in urgent situations (cf. RA, 22).[15]

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12. Cf. F.R. McManus, "The Sacrament of the Anointing...," cit., p. 707; P. Hemperek, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), pp. 179–180.

13. Cf. O. Stoffel, "Die Krankensalbung," in *Handbuch des katholischen Kirchenrechts*, hrsg. von L. Listl-H. Müller-H. Schmitz (Regensburg 1983), p. 714; F.R. McManus, "The Sacrament of the Anointing...," cit., p. 707; B.W. Zubert, "Interkomunia w swietle nowego Kodeksu," in *Prawo Kanoniczne* 31 (1986) nr 1–2, pp. 24–25.

14. SCR, Decr. *Pientissima Mater*, *AAS* 57 (1967), p. 409; cf. *SCCong*, Dir. *Peregrinans in terra*, April 30, 1969, *AAS* 61 (1969), p. 375; F.R. McManus, "The Sacrament of the Anointing...," cit., p. 708.

15. Ibid.; cf. V. de Paolis, "Il sacramento dell'unzione...," cit., p. 247; P. Hemperek, "Sakrament namaszczenia...," cit., p. 180.

CAPUT III
De iis quibus Unctio infirmorum conferenda sit

CHAPTER III
Those to Be Anointed

1004 **§ 1. Unctio infirmorum ministrari potest fideli qui, adepto rationis usu, ob infirmitatem vel senium in periculo incipit versari.**

§ 2. Hoc sacramentum iterari potest, si infirmus, postquam convaluerit, denuo in gravem infirmitatem inciderit aut si, eadem infirmitate perdurante, discrimen factum gravius sit.

§ 1. The anointing of the sick can be administered to any member of the faithful who, having reached the use of reason, begins to be in danger by reason of illness or old age.

§ 2. This sacrament can be repeated if the sick person, having recovered, again becomes seriously ill or if, in the same illness, the danger becomes more serious.

SOURCES: § 1: c. 940; PIUS PP. XII, Let. *Explorata res*, 2 feb. 1923; *SC* 73; RA 8, 10, 11, 12
§ 2: RA 9

CROSS REFERENCES: cc. 11, 97 § 2, 1001, 1005

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Subject of the sacrament of anointing

1. Chapter III ("Those to be anointed") begins with c. 1004, which constitutes a general norm that refers to the sacrament of anointing; the other three canons of this chapter (cc. 1005–1007) regulate particular

subjective cases. The legislator precisely indicates the people who may receive this sacrament, while keeping in mind the new perspective of the Vatican Council II, the post councilor pontifical documents, and the competent Congregations. It is an exact description of the spiritual, psychical and physical state of the subject of the sacrament, so that the administration of the anointing corresponds to the contemporary thought of the Church.[1]

Paragraph 1 of this canon establishes the general criteria related to the subjects of the sacrament, to indicate who may receive it; on the other hand § 2 defines the criteria for its possible repetition.[2]

2. Canon 940 § 1 of *CIC*/1917, which refers to the subject, had a negative formulation, and the words "non nisi" limited the possibility of administering the sacrament exclusively to the sick who are in danger of death. The current formulation, on the contrary, is positive, and particularizes the disposition of c. 1001, which indicates that the administration of the sacrament should be made "tempore opportuno." The subjects who may receive it are the faithful, in other words the baptized persons, who have reached the use of reason (cf. cc. 97 § 2, 11). This last requirement is understandable in that it is due to the anointing that the remission of sins is received—in case it is necessary. For this reason, the anointing becomes an improvement on Christian penance (cf. RA, 6).[3] It is precisely this consequence of the sacrament that requires the use of reason.

The greater argument in this matter is the way in which illness and old age are to be defined. Above all, it must be indicated that the legislator does not mention the nature of the illness. It is enough that it be grave, given that only grave sickness brings with it the danger of death, or—as the canon plainly indicates—it should be a question of an illness due to which the sick "begins to be in danger." The degree of danger is especially difficult to define in psychiatric illnesses; therefore, it is advisable that the minister consult competent people, and ,in case of doubt, make use of the disposition in c. 1005.[4] In the debates on the various proposals for the writing of this § 1, it was proposed that a distinction be made between those situations in which the anointing could be administered ("potest

1. Cf. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. Coriden-T J. Green-D.E. Heintschel (New York 1985), p. 708; V. de Paolis, "Il sacramento dell'unzione degli infermi," in A. Longhitano-A. Montan-J. Manzanares-V. de Paolis-G. Ghirlanda, *I sacramenti della Chiesa* (Bologna 1989), p. 247.

2. V. de Paolis, "Il sacramento dell'unzione…," cit., p. 247.

3. Cf. *Comm.* 15 (1983), p. 215; V. de Paolis, "Il sacramento dell' unzione…," cit., pp. 247–248; F.R. McManus, "The Sacrament of the Anointing...," cit., p. 708; L. Gerosa, "Krankensalbung," in R. Ahlers-L. Gerosa-L. Müller, *Ecclesia a sacramentis. Theologische Erwägungen zum Sakramentenrecht* (Paderborn 1992), p. 74.

4. Cf. F.R. McManus, "The Sacrament of the Anointing…," cit., p. 708.

ministrari"), and those in which it must be administered ("debet ministrari"). This proposal, however, was not accepted.[5] The introduction of the terms "periculose aegrotare," "graviter aegrotare," "incipit periculose aegrotare" was discussed, as well as the composition of the term "periculum" with the term "mortis." Finally, in order to agree with the canonical and the liturgical norms (cf. RA, 8 and 12; *SC* 73), the current version of the canon was accepted.[6] No reference was made regarding surgical interventions,given that this question is regulated in the liturgical norms (cf. RA, 10).[7] The current textual tone of the canon is now found in c. 957 § 1 of *Schema* of 1980 and in c. 1004 § 1 of *Schema* of 1982. Only in c. 183 § 1 of *Schema* "De sacramentis" of 1975 will we still find a restrictive text, whose introduction includes the words "tantummodo" and "graviter aegrotat."

3. People of an old age are also subjects of the sacrament of anointing. In accordance with the *Ordo*, the anointing may be administered to these people from the moment in which their strengths startto diminish, even if there is still no suspicion of a grave illness (RA, 11). However, the practice of administering anointing indiscriminately to all the people who have surpassed a certain age limit (for example, 70 years) seems to be a distortion of the thought of the legislator. The German bishops' conference has expressly prohibited this.[8] Therefore, regarding the elderly, it is required that "their strength be extremely deteriorated." Nevertheless, it appears that, as in the way in which the gravity of an illness is established, in this case it would also be enough—as the Right of Anointing, 8 states—that a "prudent, credible judgment be made calmly and after having consulted—when this is possible—a doctor."[9]

One thing seems clear: due to the introduction of the expression "in periculo incipit versari" it is not necessarily required that the sick or elderly person be in direct danger of death. The necessary relationship between illness and death is not detached in the *Ordo* or in the Apostolic Constitution *Sacram Unctionem Infirmorum*, although in the discussions previous to the writing of this canon, in spite of the fact that the word "mortis" was omitted from the canon, together with the word "periculum," the following was clarified: "sufficienter intelligitur de hoc agi."[10] It is not a question, therefore, of minimizing the gravity of the illness, but of suppressing the doubts regarding if it can be administered or not, when

5. *Comm.* 9 (1977), p. 343.
6. *Comm.* 15 (1983), p. 215.
7. Ibid., p. 216.
8. "Erklärung der Deutschen Bischofskonferenz zur Krankenpastoral" z 20.11.1978, in *Sekretariat der Deutschen Bischofskonferenz*, Hf. 19 (Bonn 1978), pp. 3ff; cf. O. STOFFEL, "Die Krankensalbung," in *Handbuch des katholischen Kirchenrechts,* hrsg. von J. LISTL-H. MÜLLER-H. SCHMITZ (Regensburg 1983), p. 714.
9. Cf. V. DE PAOLIS, "Il sacramento dell' unzione…," cit., p. 248.
10. Cf. *Comm.* 15 (1983), p. 215.

it seems that it would be advisable and fruitful. On the other hand, the legislator wishes to modify the past statements, when the anointing was reserved for people who were *in extremis.*[11]

In short, it is a question of a grave state that originates deep suffering and includes the risk of loss of life.

4. An exact analysis of the canon, the context, and the suitable liturgical norms—especially regarding the community administration of the sacrament—permits one to think that the way in which the norm is written, regarding those who receive the sacrament, is relatively extensive and also includes people who are able to reach the church on their own. D. Power spreads G. Gozzelino's consideration in his warning that if the sacrament of anointing is not only to improve the health of the sick, but is also to reinforce the faith and trust in God, to help the person to overcome the fear of death and to have victory over the temptations of the evil spirit, then the physical state of the sick person should not be the exclusive criterion on which its administration is based; his psychical and spiritual states should also be considered. Approaching the anointing with faith and with a suitable spiritual disposition causes its supernatural fruitfulness and efficiency.[12] Moreover, this is the express teaching of the Church in Right of Anointing, 13, which invites the faithful not to err when requesting the sacrament.

5. Paragraph 2 regulates that which relates to the reiteration of anointing. Said regulation is found in its parallel text in c. 940 § 2 of *CIC*/1917. The decision of *CIC*/1917 was based on the teaching of the Council of Trent, and permitted the repeating of the sacrament if the sick person, having recovered, once again "in aliud simile vitae discrimen inciderint."[13] During the works of preparation of the Apostolic Constitution *Sacrosanctum Concilium* it was desired that this limitation be omitted, but later, in a counciliar discussion, this proposal was withdrawn due to some persistent theological and historical ambiguities. The current disposition of the Code is not based, therefore, on the teaching of the Vatican Council II, but on the declaration of Paul VI in the Apostolic Constitution *Sacram Unctionem infirmorum* and on the decision of Right of Anointing, 9.[14] Its introduction in the Code did not raise particular doubts, as the various proposals of the previous *schemata* issued: c. 183 § 2 od *Schema* "De sacramentis" (1975); c. 957 § 2 of *Schema* 1980; and c. 1004 § 2 of *Schema* 1982.[15]

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11. Cf. F.R. McManus, "The Sacrament of the Anointing...," cit., p. 709.

12. Cf. D.N. Power, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), pp. 158–159; G. Gozzelino, *L' unzione degli infermi. Sacramento della vittoria sulla malattia* (Turin 1976), pp. 157–161.

13. Council of Trent, *Sess.* XIV, *Doctrina de sacramento unctionis*, ch. 3, in *Conciliorum oecumenicorum decreta* , (J. Alberigo... Eds) (Bologna 1973), p. 711; cf. F.R. McManus, "The Sacrament of the Anointing...," cit., p. 709.

14. Cf. F.R. McManus, "The Sacrament of the Anointing...," cit., pp. 709–710.

15. Cf. *Comm.* 7 (1977), p. 343.

According to the content of the canon, the sacrament of anointing may be reiterated under two circumstances: *a*) if the sick person, once he has recovered his health, becomes gravely sick again; *b*) if, during the same illness, the danger becomes graver. The basis of a new administration of anointing is therefore, in both cases, a state of health that becomes worse, being this circumstance that which should be considered in order to repeat the sacrament.[16] McManus believes that it would be incorrect to regularly repeat the sacrament, for example every week or month.[17] Ludicke, on the contrary, believes that regular reiteration of anointing to people who suffer from long illnesses is not in disagreement with the current concept of the sacrament, especially in the case of community administration.[18] It seems difficult to formulate a valid universal principle with a good basis. The decision as to the reiteration of anointing corresponds in each specific case to the minister, who should prudently judge the state of health of the sick person and consider his psychical and spiritual conditions, and if the sacrament is requested maturely.

16. Cf. P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), p. 181; V. DE PAOLIS, "Il sacramento dell'unzione...," cit., p. 249; F.R. MCMANUS, "The Sacrament of the Anointing...," cit., p. 710.

17. F.R. MCMANUS, "The Sacrament of the Anointing...," cit., p. 710.

18. K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 1004/ 1.

1005 **In dubio utrum infirmus rationis usum attigerit, an periculose aegrotet vel mortuus sit, hoc sacramentum ministretur.**

If there is any doubt as to whether the sick person has reached the use of reason, or is dangerously ill, or is dead, this sacrament is to be administered.

SOURCES: c. 941; RA 15, 135; PAULUS PP. VI, Hom., 5 oct. 1975

CROSS REFERENCES: c. 1004 § 1

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Administration of the sacrament in doubtful cases

1. This canon regulates the administration of anointing in three particular situations, in which the following are questionable; *a*) whether the sick person has reached the use of reason; *b*) if he is dangerously ill; *c*) if the subject is dead or not. In these three cases, c. 941 of *CIC*/1917 only allowed the administration of the sacrament *sub condicione*. On the other hand, it is understood that the sacrament of anointing is not one of the sacraments that imprint a character (*character indelebilis*), and therefore, it may be repeated.[1] From a theological point of view, this reason was probably decisive when the preceding law was modified. From a practical point of view it was a question, according to McManus, of eliminating any unforeseen scruples on the part of the minister when he uses the conditioned formula, and of abolishing pastoral abuses (the rejection of the administration of anointing in doubtful cases).[2] On the other hand, a pastoral reason was also considered during the discussion regarding the wording of the norm. When an unconditional and obligatory concept of administration was indicated, as it appeared in c. 958 of *Schema* 1980, and the decision of Right of Anointing, 15 was opposed ("Si vero dubitat [sacerdos] num infirmus vere mortuus sit, potest hoc sacramentum ei sub conditione praebere"), the response was that it was better to stay true to the

1. K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 1005/ 1.

2. F.R. MCMANUS, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. CORIDEN-T J. GREEN-D.E. HEINTSCHEL (New York 1985), pp. 710.

proposed text, so that, in case of doubt, the sick would not be deprived of the sacrament.[3]

a) The first doubt is whether children or mentally handicapped adults have reached the use of reason. It seems that, regarding the mental development of children, the liturgical normative clearly regulates this question in establishing that "pueris ... sacra Unctio eo iam tempore ministrari potest, cum talem habent usum rationis, ut hoc sacramento confortari possint" (RA 12). The possibility of a fruitful strengthening (spiritual, physical, and mental), through the reception of anointing, constitutes the exact criterion of judgment regarding the degree of the use of reason that is required. The same criterion can be used for people who are mentally limited. If the minister has doubts about the subject having reached a certain level of use of reason or not, he should administer anointing. The requirement of a minimal mental level is related to the sacramental effects of anointing; nevertheless, it is not essential that the child or the developmentally retarded person be able to commit sins and have the necessity of their remission.[4]

b) The second doubt refers to the situation in which the illness is truly serious. The disposition of the canon interpreted here is only an extension—related to the cases of doubt—of the decision found in c. 1004 § 1 (see commentary).[5] For this reason, in fact, the way in which "seriousness" is judged is identical: "In judging the seriousness of the illness, it is enough to have a prudent and probable opinion, that lacks any sort of anguish. If necessary, a doctor may be consulted." (RA 8).

c) The third type of doubt deals with the question of whether the sick person is still alive or not. None of the seven sacraments may be administered when it is certain that the person is dead; nor is anointing a sacrament "of the dead." However, if death is in doubt, it is necessary to administer it. The minister's judgment is also extremely important in this case; he should consult a competent person (a doctor or a nurse) before making said judgment. But if the priest has been called to the bedside of the sick person when the latter is already dead, then, in accordance with the *Ordo*: "Deum pro illo deprecetur, ut a peccatis absolvat et in regnum suum clementer admittat; Unctionem vero sacerdos ne administret" (RA 15).

2. The legislator's position, expressed in this canon and in the corresponding liturgical norms that relate to doubtful cases, has been shown to be very flexible and suitable regarding pastoral need. Certainly, any scruples or fear that the minister might have when making the right decision

3. *Comm.* 15 (1983), p. 216; cf. c. 184 *Schema* "De sacramentis" (1975) in *Comm.* 9 (1977), p. 344; cf. also F.R. McMANUS, "The Sacrament of the Anointing...," cit., pp. 710.

4. Cf. F.R. McMANUS, "The Sacrament of the Anointing...," cit., p. 710.

5. Cf. F.R. McMANUS, "The Sacrament of the Anointing...," cit., p. 710.

would be groundless and, in fact, would be out of place.[6] In each one of the aforementioned doubts, the sacrament of anointing should be administered unconditionally, as the text and the written context of the canon show; it is necessary, therefore, to interpret the liturgical decisions (RA 15, 135) in accordance with the standing canonical norm. For this reason, the opinion of O. Stoffel, who was steadily in favor of the administration of the sacrament of anointing *sub condicione* in doubtful cases related to the three situations described here, does not seem appropriate.[7]

The use of the term "doubt" in the norm does not seem to claim to be an exhaustive determination of all the possible cases; for this reason, if the minister finds himself in other doubtful situation, he should make use of what he finds in the canon.

6. Cf. K. LÜDICKE, "Das Heiligungsamt der Kirche…," cit., c. 1005/ 1.
7. Cf. O. STOFFEL, "Die Krankensalbung," in *Handbuch des katholischen Kirchenrechts*, hrsg. von J. LISTL-H. MÜLLER-H. SCHMITZ (Regensburg 1983), p. 714

1006 Infirmis qui, cum suae mentis compotes essent, hoc sacramentum implicite saltem petierint, conferatur.

This sacrament is to be administered to the sick who, when they were in possession of their faculties, at least implicitly asked for it.

SOURCES: c. 943; RA 14

CROSS REFERENCES: cc. 213, 843 § 1

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Administration to those deprived of their faculties

In normal situations, it is required that the people who have the use of reason request the sacraments in order to receive them (cf. c. 843 § 1). By way of this petition, the internal sacramental intention is exteriorized, although it should be kept in mind that in order for the sacrament to be valid it is enough that the intention be habitual. The existence of a petition for the sacrament is supposed in the faithful who wishes to do everything necessary for his salvation, who accepts the truths of Christian faith, who lives according to his own conscience and whose sacramental life has been in accordance with his own possibilities. Even if this faithful had not *explicitly* exteriorized his intention of receiving the sacrament of anointing of the sick, it is understood that he, at least implicitly, wants it.[1]

The current norm is a simplified version of c. 943 of *CIC*/1917. However, the acceptance in previous law of the sufficiency of the interpretative manifestation of habitual intention ("verisimiliter petiisent") created some difficulties in the interpretation. It is because interpretative intention does not exist *de facto*, that it is not sufficient to receive the sacrament. Therefore, what was admitted was the sufficiency of the interpretative expression of habitual intention.[2] Once more, the decision of the *Ordo* shows this: "Infirmis, qui licet sensus vel usum rationis amisserint, sacram Unctionem,

1. Cf. K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 1006/ 1; V. DE PAOLIS, "Il sacramento dell' unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 249.

2. Cf. M. CONTE A CORONATA, *Institutiones iuris canonici. De sacramentis. Tractatus canonicus*, vol. I, (Turin 1963), no. 551.

dum suae mentis compotes essent, ut credentes verisimiliter petiissent, sacramentum praeberi potest" (no. 14).

In c.186 of *Schema* "De sacramentis" of 1975, we find the canon in its current form. In spite of the fact that the critical notes on this proposal requested a slightly different wording (c. 191 *Schema* 1975), and even though the interpretative petition takes it into consideration ("verisimiliter petiisent"), the opinion that the text of c. 185 "magis incisivus sit" prevailed, and therefore it was decisively approved.[3] Neither c. 959 of *Schema* of 1980 nor c. 1006 of *Schema* of 1982 was modified.

It seems that the standing solution to the matter of the petition of the sacrament is, from the written and logical points of view, better than the previous one. In fact, the construction of the interpretative intention of the subject is unsuitable to configure a right to the sacraments. On the other hand, the sufficiency of an interpretative expression of the intention that in fact exists, if only *implicitly*, somehow affects the internal logic of the juridical norm. The current formulation is, therefore, better and should not create difficulty in its interpretation or in its application. For these reasons it is difficult to agree with McManus' interpretation that the analyzed canon is substantially identical to the corresponding liturgical norms.[4] In accordance with the legislator's decision, the administration of the anointing in the described situation is obligatory, which is not concluded with the norm of Right of Anointing, 14. Furthermore, a more simple formulation of the expression of the petition for the sacrament makes the minister's job less difficult. The introduction of the simple presumption of the intention and the petition for the sacrament exist in a believer who, even when deprived of the use of reason, seems to be sufficiently appropriate in the many pastoral situations. It should also be observed that the faithful who expresses the petition for the sacrament, even only in this way, has the right to receive it (cf. cc. 213, 843 § 1). An illness, especially an unforeseen one, may obstaculize or even impede that the person make a proper petition for the sacrament of anointing. However, if when considering his life, it can be supposed that he strived to receive the sacraments, then he has the right to receive the anointing in a situation that is dangerous to his life.[5]

3. Cf. *Comm.* 9 (1977), p. 344.

4. F.R. McManus, "The Sacrament of the Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary*, J.A. Coriden-T J. Green-D.E. Heintschel (New York 1985), p. 711.

5. Cf. K. Lüdicke, "Das Heiligungsamt der Kirche...," cit., c. 1006/1.

1007 **Unctio infirmorum ne conferatur illis, qui in manifesto gravi peccato obstinate perseverent.**

The anointing of the sick is not to be conferred upon those who obstinately persist in a manifestly grave sin.

SOURCES: c. 942

CROSS REFERENCES: cc. 884 §§1–4, 915, 1184 §1

COMMENTARY

Bronislaw Wenanty Zubert, ofm.

Prohibition of the administration of the sacrament

Canon 942 of *CIC*/1917 contained a norm that was almost identical with what is expressed in this c. 1007. The history of the drafting of the current canon shows that its introduction in the new Code did not provoke any particular doubt from the consultors. Only in c. 185 of *Schema* "De sacramentis" of 1975 were the terms abbreviated and modified in relationship to those that appeared in the old code. The expression that considered the administration of the sacrament *in dubio sub condicione* was omitted. The successive legislative proposals (c. 960 of *Schema* 1980, and c. 1006 of *Schema* 1982) are almost identical, in their terminology and content, to the standing norm.

This canon constitutes a limit on the exercise of the subjective rights of the ecclesiastical community, and for this reason it should be interpreted strictly (cf. c. 18). Therefore, only those who are known to "obstinately persist in a manifestly grave sin" can be deprived of the sacrament of anointing. Two conditions are required: obstinacy and manifestly mortal sin. The subjective attitude described by the legislator is identical to the way in which it is described in the case of possible denial of the Eucharist (c. 915) and of ecclesiastical funeral rites (c. 1184 § 1). Therefore, the principles of interpretation for the quoted canons should also be applied in the case of denial of the sacrament of anointing.[1]

1. K. LÜDICKE, "Das Heiligungsamt der Kirche. Krankensalbung," in *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz*, hrsg. K. LÜDICKE (Essen 1985), c. 1007/1; V. DE PAOLIS, "Il sacramento dell'unzione degli infermi," in A. LONGHITANO-A. MONTAN-J. MANZANARES-V. DE PAOLIS-G. GHIRLANDA, *I sacramenti della Chiesa* (Bologna 1989), p. 249.

The enumeration in c. 1184 § 1,1°–2° (notorious apostates, heretics and schismatics, and persons who had chosen the cremation of their own bodies for reasons opposed to the Christian faith) should be taken into account. This enumeration supposes an express example of the sins that the legislator considers to be grave. It should be kept in mind that in our case it would be morally difficult to confirm the existence of obstinacy in a person who is gravely sick, unless the subject consciously and firmly refuses to receive the sacrament.

The commentators on the old code referred to this matter.[2] In each case, of course, it should be confirmed that the person has not given any type of sign of repentance. The legislator considers obstinacy *iunctim* with manifestly grave sin, which usually is the cause of denial. The amount of publicity that the sin has received is notorious when it takes place in a certain environment, in the actual community in which the anointing is to be administered. Naturally, obstinacy and public knowledge of the sin should only be considered in accordance with external references, in other words, in virtue of the criteria that would be perceived in the external forum.[3] If the obstinacy and publicity of the sin are simultaneous, the minister cannot administer anointing because it is supposed that the sick person has no intention of receiving it, and said intention is necessary for its validity. The Church can only offer the sick person its sacramental ministry, but it cannot force him to receive the sacraments. Illness or danger of death do not legitimize a pastoral "pressure" on the sick person or on those closest to him. In spite of being in danger, the Christian faithful is still a free person, and it is unlawful for anyone to violate such liberty, not even with the pretext of concern for his salvation. The sick person is the only one responsible, in this case, for the denial or acceptance of the gift of salvation.[4] Therefore, for the minister a personal petition from the sick person, his will to receive the anointing, is decisive; the cases mentioned in cc. 1005 and 1006, when a third person requests the administration of the sacrament, are a different story.[5] When someone does not wish to receive it, it is not the minister who deprives him of it, but it is the faithful who deprives himself of the sacramental grace, because of his obstinacy in grave sin, and in the lack of pain and will to change his life. If the minister has doubts regarding the subjective dispositions or the effective petition of the sick person, he should administer anointing.

2. C. CONTE A CORONATA, *Institutiones iuris canonici. De sacramentis. Tractatus canonicus*, vol. I (Turin 1963), no. 552.

3. Cf. K. LÜDICKE, "Das Heiligungsamt...," cit., c. 1007/1; ibid., c. 915/2.

4. Cf. B.W. ZUBERT, "Prawa chorego we wspólnocie Kocioa," in *Homo meditans*, t. XIII (Lublin 1992), pp. 146–147; idem, "Die Rechtsstellung der Kranken in der Communio Ecclesiae," in *Iuri Canonici promovendo*, Festschrift für H. Schmitz (im Druck).

5. Cf. D.N. POWER, "Das Sakrament der Krankensalbung. Offene Fragen," in *Concilium* 27 (1991), p. 159.

In this matter, the most liberal attitudes of the current society, in relationship with the danger of scandal that could follow in the community of the faithful, must be taken into account. Without a doubt, said danger is less today than it was in the past.[6]

Lastly, it should be remembered that Catholics, under the circumstances indicated in c. 844 § 2, may receive anointing from a non-Catholic minister from one of the churches in which it is validly administered. And §§ 3 and 4 of c. 844 regulate the administration of the sacrament of anointing of the sick by Catholic ministers to the members of eastern churches who are not in full communion with the Catholic Church (see commentary on c. 844).[7]

6. Cf. F.R. MCMANUS, "The Sacrament of tre Anointing of the Sick," in *The Code of Canon Law. A Text and Commentary,* J.A. CORIDEN-T.J. GREEN-D.E. HEINTSCHEL (New York 1985), p. 711.

7. Cf. O. STOFFEL, "Die Krankensalbung," in *Handbuch des katholischen Kirchenrechts,* hrsg. von L. LISTL-H. MÜLLER-H. SCHMITZ (Regensburg 1983), p. 714; P. HEMPEREK, "Sakrament namaszczenia chorych (cc. 998–1007)," in *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3 (Lublin 1986), p. 181.

TITULUS VI
De ordine

TITLE VI
Orders

1008 **Sacramento ordinis ex divina institutione inter christifideles quidam, charactere indelebili quo signantur, constituuntur sacri ministri, qui nempe consecrantur et deputantur ut, pro suo quisque gradu, in persona Christi Capitis munera docendi, sanctificandi et regendi adimplentes, Dei populum pascant.**

By divine institution some among Christ's faithful are, through the sacrament of orders, marked with an indelible character and are thus constituted sacred ministers; thereby they are consecrated and deputed so that, each according to his own grade, they fulfil, in the person of Christ the Head, the offices of teaching, sanctifying and ruling, and so they nourish the people of God.

SOURCES: c. 948; *LG* 10, 11, 20, 27; *PO* 2, 5, 7, 12, 18; PAULUS PP. VI, Ap. Const. *Pontificalis Romani*, 18 iun. 1968 (*AAS* 60 [1968] 370–371)

CROSS REFERENCES: cc. 208, 290, 845, 1338

COMMENTARY

Dominique Le Tourneau

As is known, the Code introduces the norms pertaining to each sacrament with one or several canons, which establish the theological doctrine of the Church on each sacrament, and recalls the matter and the form of each sacrament. Canons 1008–1009 play this role here.

1. The canon starts by affirming the divine institution of the sacrament of holy orders. The early draft specified "ex Christi institutione." It was changed because it could not be said in all likelihood that Christ had

directly instituted the priesthood and the diaconate.[1] In fact, the Council of Trent defined the institution of the seven sacraments by Jesus Christ, without entering into the argument of whether the difference between the episcopacy and the priesthood is of divine law or not, or if it is an immediately divine institution or if it proceeds from a faculty granted by Christ to the Church.[2] What was affirmed, against certain Protestant theories according to which the distinction between clergy and laity only appeared in the fourth century, was the divine institution of a Hierarchy composed of bishops, priests and deacons.[3]

"Divine institution" is seen as opposing ecclesiastical institution. It is on the basis of this distinction that Paul VI proceeded to reform the minor orders.[4]

It should be emphasized that this ministerial differentiation or functional inequality[5] does not affect the true equality that exists among all the faithful "with regard to the dignity and to the activity which is common to all the faithful" (*LG* 32) in virtue of baptism. This equality is also rooted in the divine will and enables cooperation in the building of the Body of Christ (cf. c. 208).

2. Holy orders are one of the three sacraments that imprints a character, that is, an indelible mark. This important doctrinal aspect remains markedly indicated in this canon, although it is through a subordinate clause.[6] The ordained are consecrated in a new and irrevocable way (which is added to the baptismal consecration) and deputed, continuing the mission of Christ in the world, to nourish the people of God. They are instituted as doctors, dispensers of mysteries and pastors for the good of the rest of the faithful (cf. *LG* 32).

The impossibility of reiterating or administering the sacrament of holy orders again is derived from its character, as occurs with baptism and confirmation (cf. c. 845 § 1). The sacred rite is only renewed if there is absolute certainty that the sacrament has not been effectively or validly conferred. In the case of a well-founded doubt, which subsists after proceeding with a diligent investigation, it is administered "sub condicione" (cf. c. 845 § 2).

But once holy orders has been validly received, it can never be declared null, even if the cleric loses his clerical state, under the circumstances established in c. 290. The cleric cannot be deprived of the power

1. *Comm.* 10 (1978), p. 181.
2. Cf. the reply dated July 14, 1563, in *Concilium Tridentinum diariorum, actorum, epistolarum, tractatuum nova collectio*, t. 3, *Diariorum pars tertia*, vol. I (Freiburg im Breisgau 1931), p. 691.
3. CONC. TRID., *Sess.* 23, *De sacr.* Ord, c. 6, Dz-Sch. 1776. Cf. *LG* 28.
4. PAUL VI, mp *Ministeria quaedam*, August 15, 1972, in *AAS* 64 (1972), pp. 529–540.
5. Cf. A. DEL PORTILLO, *Fieles y laicos en la Iglesia*, 2nd ed. (Pamplona 1981), pp. 41–45.
6. Cf. *Comm.* 15 (1983), p. 216.

of orders; he can only be prohibited from exercising it totally or for only some acts (cf. c. 1338 § 2).

3. The sacrament presents two aspects: consecration and mission. A Father pointed out that the verbs "ordinare" and "consecrare" are used in an univocal sense, and the use of "consecrationis" may refer to realities different from that of the sacrament of holy orders, as are, for example, institutes of consecrated life, or explicitly applying to the bishop in the sacrament of holy orders. The Relater answered that both "ordinare" and "consecrare" apply to deacons, priests and bishops in different aspects ("ordinare" means to confer the order and "consecrare" designates the action by which the candidate is consecrated to God by the order). However, according to usage, "consecrare" may be more properly applied in reference to the bishop.[7]

Consecration supposes divine vocation or election, which is specified by the call by the bishop for deacons and priests. It is a hierarchical and ministerial gift for the community of believers. Each aspect implies the other: one is consecrated in order to exercise the functions of teaching, sanctifying and ruling the faithful. In the first *schema* it was said that ordination destined them "munera adimplentes Evangelium annuntiandi, christifideles regendi et divinum cultum celebrandi." In the discussion it was pointed out that this sentence presented the *tria munera* using terminology and an order that were different from those used in the rest of the canons, inserting the word "cultum" in place of "munus sanctificandi." The proposal to substitute "divinum cultum" for "liturgiam" was not accepted, but an appropriate change was made in order to reach the current formulation.[8]

The minister acts "in persona Christi Capitis," and not only "in persona Christi" as it appeared in the first *schema*, since that expression did not clearly translate the distinction between the common priesthood of all the baptized and the ministerial priesthood of the ordained with enough emphasis, being that the former also is also exercised "in persona Christi."[9]

4. The ordained carry out these functions "pro suo quisque gradu." There only exists one sacrament of holy orders, but it admits three grades and reaches its fullness in the episcopate (cf. *LG* 21).[10] The clause "pro suo quisque gradu"[11] was added to the early *schema* to better indicate the diverse condition and the distinction between episcopate, priesthood and diaconate.

7. Cf. ibid., p. 217.
8. Cf. ibid., pp. 216–217.
9. Cf. *Comm.* 10 (1978), p. 181.
10. Cf. PAUL VI, Ap. Const. *Pontificalis Romani*, June 18, 1968, in *AAS* 60 (1968), pp. 369–373.
11. *Comm.* 10 (1978), p. 181.

1009 **§ 1. Ordines sunt episcopatus, presbyteratus et diaconatus.**

§ 2. Conferuntur manuum impositione et precatione consecratoria, quam pro singulis gradibus libri liturgici praescribunt.

§ 1. The orders are the episcopate, the priesthood and the diaconate.

§ 2. They are conferred by the laying on of hands and the prayer of consecration which the liturgical books prescribe for each grade.

SOURCES: § 1: c. 949; *LG* 28, 29; *PO* 1; PIUS PP. XII, Ap. Const. *Sacramentum Ordinis,* 30 nov. 1947 (*AAS* 40 [1948] 5); *SDO* 18; PAULUS PP. VI, Ap. Const. *Pontificalis Romani,* 18 iun. 1968 (*AAS* 60 [1968] 370–371)
§ 2: *LG* 21, 29; PIUS PP. XII, Ap. Const. *Sacramentum Ordinis,* 30 nov. 1947 (*AAS* 40 [1948] 6–7); PAULUS PP. VI, Ap. Const. *Pontificalis Romani,* 18 iun. 1968 (*AAS* 60 [1968] 372–373); PONTIFICALE ROMANUM [1968]: *De Ordinatione Diaconorum,* 20–21; *De Ordinatione Presbyterorum,* 20–22; *De Ordinatione Episcopi,* 24–26

CROSS REFERENCES: cc. 230, 265, 266, 1035, 1050

COMMENTARY

Dominique Le Tourneau

1. Paragraph 1 enumerates the grades of the order, according to the teachings of Vatican II: "Thus the divinely instituted ecclesiastical ministry is exercised in different degrees by those who even from ancient times have been called bishops, priests and deacons" (*LG* 28).

Canon 949 *CIC*/1917 mentioned three "major" or "sacred" orders: priesthood, diaconate and subdiaconate (the subdiaconate appeared in the third century; it was considered to be a major order in the West after the Lateran Ecumenical Council, in 1139, had generalized the obligation of celibacy for this order). Four orders were called "minor": acolyte, exorcist, lector and porter. Although in the past they were venerated, this distribution was no longer suitable for the requirements of modern times. Hence, a reform was carried out by Paul VI.[1] The minor orders no longer

1. PAUL VI, mp *Ministeria quaedam,* August 15, 1972, in *AAS* 64 (1972), pp. 529–540.

existed as orders, and are now considered to be "ministries," and the conferral of "ordination" is now called "institution." This reform makes clear the distinction between clergy and laity, between that which belongs to the clergy and can only be carried out by them, and that which can be asked from the laity (see commentary on cc. 230, 910, 943, 1035 § 1, 1050, 3°).

Of what has been stated, it should be emphasized that the episcopate as such was not mentioned as one of the orders in *CIC*/1917. It was a novelty of Vatican Council II to recognize it as a sacrament, as in the following text: "The Holy Synod teaches, moreover, that the fullness of the sacrament of Orders is conferred by episcopal ordination, that fullness, namely, which both in the liturgical tradition of the Church and in the language of the Fathers of the Church is called the high priesthood, the acme of the sacred ministry" (*LG* 21).

There is an essential difference between the diaconate and the other two orders, since, as the Vatican II reminds, with the text of the *Constitutiones Ecclesiae aegyptiacae*, the deacons are ordained "not unto the priesthood, but unto the ministry" (*LG* 29).[2] Paul VI reestablished the permanent diaconate in the Latin Church (cf. cc. 1031 § 2–4, 1032 § 3).[3]

The difference between the episcopate and the priesthood is only one of grade. Priests really participate in the priesthood of Christ (*PO* 10) and are collaborators of the episcopal Order and, therefore, exercise this sacred power to sanctify and govern the portion of the flock of the Lord that corresponds to them, "under the authority of the Bishop" (*LG* 28).

As we have seen, the episcopate is recognized as having the fullness of the priesthood, a reality that was firmly reiterated by the last Ecumenical Council (cf. *LG* 26, 41; *CD* 15; *PO* 2, 7).

The initial text of c. 191 proposed to be examined by the *Coetus studiorum de Sacramentis* in its session on February 6–10, 1978 ("Ordines sunt episcopatus, presbyteratus et diaconatus"), seemed too drastic to some Fathers, who proposed that there be a separate description of the episcopate, of the priesthood and of the diaconate. However, the majority did not share this opinion, since these definitions were found in the *Lex Ecclesiae Fundamentalis*, which was still being studied at that time.[4]

2. The matter and the form required for the valid administration of the sacrament in each of the three grades is specified in § 2. This matter was not mentioned at all in *CIC*/1917, since it was a matter that was still

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2. Cf. PAUL VI, Ap. Const. *Pontificalis Romani*, June 18, 1968, in *AAS* 60 (1968), pp. 369–373.

3. PAUL VI, mp *Sacrum diaconatus ordinem*, June 18, 1967, in *AAS* 59 (1967), pp. 687–704; mp *Ad pascendum*, August 15, 1972, in *AAS* 64 (1972), pp. 534–549.

4. *Comm.* 10 (1978), p. 181.

being debated among the authors. Pius XII, by means of the Const. *Sacramentum Ordinis*, settled it, by decreeing that the matter of the sacrament is constituted by the laying of the hands which must be done by physically touching the head of the one being ordained, the "moral contact" being enough for validity."[5] The rites of handing over the significant instruments of the ministry to the ordained are not essential. The form is the prescribed prayer of consecration in the liturgical books for each one of the three grades.

The Church cannot declare orders conferred by heretics or schismatics null if they used the prescribed matter and form, and if they are administered with the intention of doing what the Church does (see commentary on c. 1012). It is known that the main reason that Pope Leo XIII declared the Anglican ordinations null was that the Anglican Ritual lacked the essential form.[6]

The reception of the sacrament of orders produces the transmission of the power of orders and the specific sacramental grace aimed at the due fulfillment of the corresponding ecclesiastical ministry.

Paul VI[7] sanctioned this discipline which is reproduced in the present canon.

5. PIUS XII, Const. *Sacramentum Ordinis*, November 31, 1947, in *AAS* 40 (1948), pp. 5–7.
6. LEO XIII, Const. *Apostolicae curae*, September 13, 1896, in *AAS* 29 (1896), p. 193.
7. PAUL VI, Ap. Const. *Pontificalis Romani*, June 18, 1968, in *AAS* 60 (1968), pp. 369–373.

CAPUT I
De Ordinationis celebratione et ministro

CHAPTER I
The Celebration of Ordination and the Minister

1010 **Ordinatio intra Missarum sollemnia celebretur, die dominico vel festo de praecepto, sed ob rationes pastorales aliis etiam diebus, ferialibus non exceptis, fieri potest.**

An ordination is to be celebrated during Mass, on a Sunday or holyday of obligation. For pastoral reasons, however, it may take place on other days also, even on ferial days.

SOURCES: c. 1006; SCDS Ind., 18 maii 1940; *PM* 18; PONTIFICALE ROMANUM [1968]: *De Ordinatione Diaconorum*, 1; *De Ordinatione Presbyterorum*, 1; *De Ordinatione Episcopi*, 1

CROSS REFERENCES: cc. 1011

COMMENTARY

Dominique Le Tourneau

This canon, the first in the chapter "The Celebration of Ordination and the Minister," establishes the time in which ordination is celebrated. It initially appeared in chapter IV of the first *schema* (see introduction on tit. VI of book IV, part I) and consisted of two paragraphs, the first was for episcopal ordination, and the second was for all other ordinations. It was agreed to join them in one paragraph, omitting in both the clause "cum christifidelium quam maxima frequentia," which referred to the solemn Mass. In this way the current formulation was reached, with the difference that the ordinations are spoken of in plural.[1]

1. Cf. *Comm.* 10 (1978), p. 206.

Canon 1010 maintains the old tradition of conferring ordination on Sundays and other holy days of obligation. Although for pastoral reasons it may be celebrated on any day, even on workdays (given that in 1940 the Holy See authorized the celebration of ordinations on workdays.)[2]

The previous legislation prescribed that the episcopal ordination be conferred during Sunday Mass, the first knowledge of this dates back to the fifth century,[3] or in the *dies natalitius* of an Apostle. This excluded it from being conferred on the day of the Chair of Saint Peter, of Saint Peter *in vinculo* and of Saint John *ante portam Latinam*, and also that of Saint Barnabas, (days for which an indult was necessary.)[4] Ordinations in the case of the "major orders" were celebrated on Ember Saturdays, the Saturday before the Sunday of Passion or on Easter Saturday, although for serious reasons, which may affect the bishop or the ordinandi, the bishop could confer them on any Sunday or holy day of obligation. The "minor orders" were conferred on Sunday morning and in the morning on double feast days, and could be done outside of Mass.

The episcopal, priestly and diaconal orders are conferred in accordance with the rites prescribed in Ap. Const. *Pontificalis Romani* of Paul VI, of June 16, 1968.

2. Cf. SCDS, *Indulto*, May 18, 1940, for the bishops of the U.S.A., cited in the sources of the canon.
3. Cf. *Cánones de Hipólito* (*circa* 500), attributed to St. Hippolytus of Rome.
4. SCRit, *Reply*, April 4, 1913, cited in *Fontes* of the *CIC*/1917, no. 6391.

1011 **§ 1. Ordinatio generaliter in cathedrali ecclesia celebretur; ob rationes tamen pastorales in alia ecclesia aut oratorio celebrari potest.**

§ 2. Ad ordinationem invitandi sunt clerici aliique christifideles, ut quam maxima frequentia celebrationi intersint.

§ 1. An ordination is normally to be celebrated in the cathedral church. For pastoral reasons, however, it may be celebrated in another church or oratory.

§ 2. Clerics and other members of Christ's faithful are to be invited to attend an ordination, so that the greatest possible number may be present at the celebration.

SOURCES: § 1: c. 1009 §§ 1 et 2; *PM* 18; *DPMB* 87d
§ 2: c. 1009 § 1; PONTIFICALE ROMANUM [1968]: *De Ordinatione Diaconorum*, 1; *De Ordinatione Presbyterorum*, 1; *De Ordinatione Episcopi*, 1

CROSS REFERENCES: cc. 1010

COMMENTARY

Dominique Le Tourneau

This canon deals with the place of celebration. The *schema* consisted of only one paragraph. For the sake of greater clarity, the decision was made to divide it in two parts, the first dealt with the place of celebration of ordination and the second dealt with those invited. At the same time, for obvious reasons, all references to the presence of the cathedral canons were omitted and the introduction "aliique christifideles" was expressly mentioned.[1]

The norms in *CIC*/1917 established the celebration of the so-called "general" ordinations in the cathedral church. If they did not take place in the episcopal see, then the most suitable local church was to be chosen. The authors do not agree on what was meant by "general" ordinations: the ordinations celebrated on liturgical Saturdays (Ember Saturday, Saturday

1. Cf. *Comm.* 10 (1978), pp. 206–207.

of Passion and Easter Saturday: see commentary on c. 1010); or the ordinations of students in the same year of theology.[2] The cathedral chapter had to attend these ordinations.

For a just cause, the bishop could confer particular ordinations in other churches, or even in the oratory of the episcopal house of a seminary or of a religious house.

Paul VI gave bishops the faculty (*PM* 18) of "conferring the sacred orders outside of the cathedral church and outside of the anticipated time, even during the week, if a pastoral reason requires it" (see commentary on c. 1010). Therefore, the faculty that was previously granted to the bishop to confer ordinations in any type of church or oratory is generalized.

Maximum participation by the clergy and the rest of Christ's faithful is urged in § 2. This is the reason for the disposition in c. 1010 regarding the celebration of the sacred orders, for pastoral reasons, on workdays (cf. *AA* 3, which recommends active participation by the faithful in liturgical life). Of course it could be useful for the ordination of deacons and priests to be celebrated in the parish of the candidate, or any place where they have already exercised a ministry, in order to achieve a greater pastoral fruitfulness.

The ceremony must be diligently prepared with dignity,[3] so that it contributes to the priests, deacons, seminary students and the rest of the faithful to become one with the bishop.

2. Cf. R. NAZ, *Traité de droit canonique*, II, *Des Sacrements*, 2nd ed. (Paris 1955), no. 322, pp. 277–278.
3. Cf. SCCE, Instr. *In ecclesiasticam futurorum*, June 3, 1979, no. 39.

1012 **Sacrae ordinationis minister est Episcopus consecratus.**

The minister of sacred ordination is a consecrated Bishop.

SOURCES: c. 951; *LG* 21, 26; *PO* 5; PAULUS PP. VI, Ap. Const. *Pontificalis Romani,* 18 iun. 1968 (*AAS* 60 [1968] 372–373); *DPMB* 77

CROSS REFERENCES: cc. 1013, 1015

COMMENTARY

Dominique Le Tourneau

A lapidary norm determines the minister of the sacred ordination. Due to a positive law, it is a question of a consecrated bishop (the proposal of a Consultor to substitute "consecrated" for "ordained," a term commonly used in liturgical books, was not admitted[1]). This power that bishops have to confer orders has been defined by the Council of Florence,[2] which designates the bishop as the "ordinary minister," and was reaffirmed by the Council of Trent.[3]

The Code Commission did not wish to settle the debate over whether the bishop is the ordinary minister, and with an express mandate from the Roman Pontiff, a priest can be an extraordinary minister of some orders, as stated in c. 951 of *CIC*/1917. Nor did it wish to settle the debate over whether it is a disposition of divine law or if it is merely ecclesiastical law. It seems that this possibility can be deduced from some documents: for example, Boniface IX[4] conceded to the Abbot of Saint Osith, in England, and his successors, the power to ordain their subjects of subdeacons, deacons or even priests.[5] In this way, the canons regular at Saint Osith could be ordained in their houses by the Abbot, provided that he is vested with a quasi-episcopal dignity, or by a bishop called by the Abbot *ad casum.*[6] Innocent VIII[7] conceded to the General of the Cistercians and his successors

1. Cf. *Comm.* 10 (1978), p. 182.
2. CONC. FLOREN., Papal bull *Exsultate Deo,* Decr. *Pro Armeniis,* Dz.-Sch. 1326.
3. CONC. TRID., *Sess.* XXIII, *Doctrina sobre el sacramento del Orden,* Dz.-Sch. 1768 and 1777.
4. BONIFACE IX, Papal bull *Sacrae religionis,* February 1, 1400, Dz.-Sch. 1145; Papal bull *Apostolicae Sedis providentia,* February 6, 1403, Dz.-Sch. 1146; MARTIN V, Papal bull *Gerentes ad vos,* November 6, 1427, Dz.-Sch. 1290.
5. Cf. "La Scuola Cattolica," March 1924.
6. Cf. P.J. PUIG DE LA BELLACASA, S.J., in *Estudios Eclesiásticos,* April 1925; P. HUGON, in *Revue Thomiste,* May–June 1926.
7. INNOCENT VIII, papal bull *Exposcit tuae devotionis,* April 9, 1489, Dz.-Sch. 1435.

the faculty to confer the subdiaconate and the diaconate to all the subjects of his Order. Not all the authors agree with the interpretation of these texts.

In any case, since Paul VI abolished the minor orders, the previous distinction no longer had any basis. For this reason the Commission did not agree to add the adverb *unice* to that canon.[8] In this way the bishop appears as minister of both the ordination of bishop, as well as that of priest or of deacon. In fact, by defining the matter and form of the ordinations, Paul VI clearly established that the matter is constituted by the laying of the hands by the bishop (ordination of deacon or of priest) or of the consecrating bishops or at least of the main consecrator (ordination of bishop).[9]

Therefore, any ordination attempted by a priest would be null, there is no question of delegation or of supplying the power of the bishop.

Ordinations conferred by a bishop who uses the matter and the form established by the liturgical laws and acts with the intention of doing what the Church does are valid, even if that bishop is not in communion with the Church and proceeds with the ordination breaking all laws or any of them. (In this case, the penalties are incurred because one acts with disregard for the law, cf. cc. 1382–1383; see also the commentary on c. 1013).

8. Cf. *Comm.* 10 (1978), p. 182.
9. PAUL VI, Ap. Const. *Pontificalis Romani*, June 18, 1968, in *AAS* 60 (1968), pp. 369–373.

1013 **Nulli Episcopo licet quemquam consecrare in Episcopum, nisi prius constet de pontificio mandato.**

No Bishop is permitted to consecrate anyone as Bishop, unless it is first established that a pontifical mandate has been issued.

SOURCES: c. 953; *CD* 20; *ES* I, 10; PAULUS PP. VI, Ap. Const. *Pontificalis Romani*, 18 iun. 1968 (*AAS* 60 [1968] 372–373)

CROSS REFERENCES: cc. 149, 336, 379, 1012, 1382

COMMENTARY

Dominique Le Tourneau

1. Canons 1013ff. deal with the legitimate minister of the ordination, distinguishing first the episcopal ordination or consecration (cc. 1013–1014), and then the priestly and diaconal ordination (cc. 1015–1017).

Vatican Council II invoked the principle of apostolic communion, without which "bishops cannot assume any office" (*LG* 24).

The text of c. 1013 reminds us of the former c. 953 *CIC*/1917, having omitted the reference to the cause of this disposition: "Consecratio episcopalis reservatur Romano Pontifice ita ut ..." It does not maintain the explanation introduced in the first text of the present canon: "Cum membrum Collegii Episcoporum quis constituatur vi sacramentalis consecrationis et hierarchica communione cum Collegii Capite et membris ..." an explanation of a theological nature, and better expressed in that time in the *Lex Ecclesiae Fundamentalis* and now in c. 336, being that communion is a condition required to be named for an ecclesiastical office (cf. c. 149 § 1).

The discussion at the heart of the *coetus* "De sacramentis" shows a divergence in thought. One consultor emphasizes that the first part of the canon, that which is quoted above, refers to the validity of the ordination, while the second, the current wording of c. 1013, affects the lawfulness. The ponens believes that the ordination is the constitutive element, while communion is only a condition. The first consultor responds to this with the argument that communion is also a condition, although only for validity. To this another consultor adds that if someone who was not in communion with the Church were to ordain a bishop, the latter would truly be a bishop, although he would not belong to the College. The first consultor

considers that such an affirmation can no longer be formulated after Vatican Council II, since he who is not in the College of Bishops is not a bishop.

The President of the *coetus* then reminds us of the *Nota bene* of the *pen*, which was added to *Lumen gentium*, over which the Council Fathers did not wish to enter into theological disquisitions. The *Nota bene* reads thus: "Without hierarchical communion, the sacramental-ontological function *cannot be exercised.* This function must be distinguished from the canonical-juridical aspect. The Commission thought that it should not deal with the matters of *liciety* and *validity* which should be the subject of discussion between theologians, particularly in reference to the power in fact exercised among the separated Eastern Christians. Different opinions exist regarding this matter."[1]

2. According to the canon as written, the consecration of a bishop is reserved to the Roman Pontiff, independent of the way in which the candidate was designated. Therefore, in order for such an ordination to be conferred licitly, it is necessary that the existence of the corresponding pontifical mandate *constet* previously. It is not indispensable for it to have been received or that it be read in the ceremony. The bishop who confers ordination without such a mandate, as well as he who receives the consecration, will incur an excommunication *latae sententiae* reserved for the Apostolic See (see c. 1382 and commentary).

Several recent cases have reaffirmed this doctrine. In the ordinations of priests and bishops without canonical provision, performed in Palmar de Troya (Spain) by Msgr. Ngo Dinh-Thuc, the latter conferring, in turn, illegitimate ordinations of priests and bishops, a decree by the SCDF, after reminding of the canonical penalties, states the following principle: "Quod attinet ad eos qui hoc modo illegitimo ordinationem iam acceperunt vel qui ab his forte eandem accepturi sunt, quidquid est de ordinum validitate, Ecclesia ipsorum ordinationem neque agnoscit neque agnitura est, eosque ad omnes iuris effectus, in eo statu habet, quem ipsi singuli antea habuerint."[2] It was necessary to later reiterate this decree, because incurring excommunication, Msgr. Ngo Dinh-Thuc again conferred ordinations of priests and bishops, without the corresponding canonical provisions.[3] This doctrine has also been indicated regarding the "Latin Catholic Church," which has no ties with the Catholic Church and whose sacramental acts are not recognized by the Apostolic See.[4] This situation has not been modified by the pseudo-episcopal ordination of a member of this

1. Cf. *Comm.* 10 (1978), pp. 182–183.
2. SCDF, *Decr. Regarding the illegitimate ordination of priests and bishops*, September 17, 1976, in *AAS* 68 (1976), p. 623.
3. SCDF, *Notificación*, March 12, 1983, in *AAS* 75 (1983), pp. 392–393.
4. A letter from Cardinal Franc. Seper, Prefect of the SCDF to the Archbishop of Toulouse, October 4, 1973 (cf. "La Documentación Catholique," no. 1654, May 19, 1974, p. 467).

"church" by Msgr. Ngo Dinh-Thuc himself, in light of the Decree of 1983 of SCDF.[5] The declaration of the excommunications of Msgr. Marcel Lefebvre, of the "bishops" that he consecrated, and of Msgr. de Castro Mayer who participated as co-consecrators, should also be mentioned.[6]

5. A letter from A. Bovone, Secretary of the SCDF, to the Archbishop of Toulouse, May 20, 1987 (cf. "La Documentation Catholique," 1944, July 19, 1987, p. 781).
6. CB, Decree July 1, 1988, in *AAS* 80 (1988).

1014 **Nisi Sedis Apostolicae dispensatio intercesserit, Episcopus consecrator principalis in consecratione episcopali duos saltem Episcopos consecrantes sibi adiungat; valde convenit autem, ut una cum iisdem omnes Episcopi praesentes electum consecrent.**

Unless a dispensation has been granted by the Apostolic See, the principal consecrating Bishop at an episcopal consecration is to have at least two other consecrating Bishops with him. It is, however, entirely appropriate that all the Bishops present should join with these in consecrating the Bishop-elect.

SOURCES: c. 954; PIUS PP. XII, Ap. Const. *Episcopali consecratione*, 30 nov. 1944 (*AAS* 37 [1945] 131–132; *SC* 76; *IOe* 69; *LG* 21, 24; PONTIFICALE ROMANUM [1968]: *De Ordinatione Episcopi*, 2, 23, 24

CROSS REFERENCES: c. 379

COMMENTARY

Dominique Le Tourneau

The requisite that there be at least three consecrating bishops, one of them being the principal consecrating bishop, comes from a very old tradition, dating back to before the Council of Nicea (325) in which it is explicitly mentioned (c. 4). But this does not affect the validity of an ordination preformed by only one bishop (see commentary on c. 379).

The norm of c. 1014 adds that it is entirely proper that all the bishops present should join "in consecrating the Bishop-elect." Vatican Council II only invoked one possibility: "In the consecration of a Bishop, the laying on of hands may be done by all the Bishops present" (*SC* 76). It was the job of the Instr. *Inter Oecumenini* to make it explicit that all bishops present could lay their hands (*IOe* III, V).

The current text reinforces the previous discipline, with the introduction of the adverb "valde" to the early writing of the canon.[1] This is done in accordance with the dispositions of the *Pontificale Romanum* regarding the appropriateness of all bishops present ordaining the bishop-elect.[2]

1. Cf. *Comm.* 10 (1978), p. 183.
2. *Pontificale Romanum*, August 15, 1968, *De Ordinatione Episcopi, praenotanda: AAS* 60 (1968), p. 3704.

We also indicate here another semantic modification, which consists in substituting "ordinent" for "consacrent" (see commentary on c. 1012).

The possibility of making this disposition was quickly admitted in the West. It can be mentioned that the authorization given by St. Gregory the Great to St. Augustine of Canterbury to ordain a bishop by himself, only if he could not find another one in England. Other examples can be seen in the *Fontes* of *CIC*/1917.

The liciety of an episcopal ordination performed in a way different from that established is recognized; for example by two bishops and a dean of a cathedral[3] or by a bishop assisted by two canons.[4] Leo XIII authorized in Latin America that, if there were no bishops, two dignitaries or canons could perform the role of assistants.[5]

Pius XII preferred the term "consecrators" to "assistants," which was used until then, because the co–consecrators are to actively participate in the entire sacred rite and have the intention of conferring the episcopal order.

Pius XII established that the two consecrating bishops must pray, in a low voice, the majority of the prayers pronounced by the principal minister, including the formula of the ordination, touching the head of the ordained with both hands and having the intention of ordaining him.[6] In this way, each bishop acts as a true co–consecrator and assures the validity, so to speak, of the rite for himself.

3. SCRit, December 17, 1642, in *Fontes*, no. 5425.
4. Absolution for which was given by Alexander VII, after having consulted with the SCCouncil, February 27, 1660, in *Fontes*, no. 236.
5. Dated April 18, 1897, in *Fontes*, no. 633.
6. PIUS XII, Ap. Const. *Episcopalis consecrationis*, November 30, 1944, in *AAS* 37 (1945), pp. 131–132.

1015 **§ 1. Unusquisque ad presbyteratum et ad diaconatum a proprio Episcopo ordinetur aut cum legitimis eiusdem litteris dimissoriis.**

§ 2. Episcopus proprius, iusta de causa non impeditus, per se ipse suos subditos ordinet; sed subditum orientalis ritus, sine apostolico indulto, licite ordinare non potest.

§ 3. Qui potest litteras dimissorias ad ordines recipiendos dare, potest quoque eosdem ordines per se ipse conferre, si charactere episcopali polleat.

§ 1. Each candidate is to be ordained to the priesthood or to the diaconate by his proper Bishop, or with lawful dimissorial letters granted by that Bishop.

§ 2. If not impeded from doing so by a just reason, a Bishop is himself to ordain his own subjects. He may not, however, without an apostolic indult lawfully ordain a subject of an oriental rite.

§ 3. Anyone who is entitled to give dimissorial letters for the reception of orders may also himself confer these orders, if he is a Bishop.

SOURCES: § 1: c. 955 § 1; CodCom Resp. I, 17 feb. 1930 (*AAS* 22 [1930] 195)
§ 2: c. 955 § 2; CodCom Resp. I, I, 24 iul. 1939 (*AAS* 31 [1939] 321); *OE* 1–5
§ 3: c. 959

CROSS REFERENCES: cc. 266, 1012, 1018, 1383

COMMENTARY

Dominique Le Tourneau

This canon is the first of the norms regarding presbyteral and diaconal ordination. They are articulated in three canons: general norms, the proper bishop, and the territoriality of the ordination.

Canon 1015, on the general norms, consists of three paragraphs, which should be studied separately.

1. Canon 1015 § 1 corresponds to c. 955 § 1 of *CIC*/1917, with the introduction of the clause "ad presbyteratum et ad diaconatum," and comes directly from the Council of Trent.[1] Two possibilities are foreseen for the ordination of the candidates for the priesthood and the diaconate: that

1. Cf. CONC. TRID., *Sess.* XXIII *de Reform*, ch. VIII.

they be ordained by their own bishop, (a norm which does not present any difficulty in its interpretation), or that they be ordained by another bishop, with legitimate dimissorial letters (see commentary on c. 1018) from their own bishop. The dimissorial letters are those letters "in which permission is granted to a candidate to receive the orders from the hands of a Bishop of whom he is not a subject."[2]

Were there a case in which a bishop had conferred sacred orders on candidates who were not his subjects without the due dimissorial letters, he would incur prohibition to ordain for one year, and the ordained would remain *ipso facto* suspended from the order received (c. 1383).

Likewise, if a non-catholic bishop confers the orders on Catholics, the ordained are considered to be heretics or at least are suspected of heresy. Since the Church does not recognize these ordinations, those who receive them are to be considered to be laypersons, for all canonical effects, as well as regarding the faculty to contract marriage.[3]

2. Paragraph 2 also originated in the Council of Trent.[4] The "just cause" to which the text alludes was at that time only constituted by illness. However, a few years after the Council of Trent ended, all types of just causes were admitted,[5] for example, distance or expenses caused by long trips in large dioceses. Ordinary inconveniences or slowness in fulfilling this duty are not, of course, sufficient reasons.

On the other hand, a bishop of the Latin rite cannot licitly proceed with the ordination of a subject of an eastern rite, unless he has obtained an Apostolic indult. This second part of § 2 was maintained[6] even though an emendation requested that it be omitted because the *Codex* only referred to the Latin Church, or because c. 203 of the *schema* (the current c. 1021) seems to repeat the same norm. The proposal to consult the Hierarch of the other rite was not approved, nor were other emendations directed to change "ritus" to "Ecclesiae," or to substitute the requisite of an apostolic indult for that of the dimissorial letters of the bishop of the candidate, or to add the requisite of having received the sacrament of confirmation.

Such interdiction conforms to Vatican Council II, which favors a respect for the eastern rite and safeguarding its traditions (cf. *OE* 1–5).

It could happen, however, that at times a baptized person may be ignorant that he or she belongs to an eastern rite, usually due to an error at the moment of baptism. Therefore, he or she would be considered to belong to the Latin Church.

2. P. FOURNERET, "Dimissoriales (lettres)," in *Dictionnaire de Théologie Catholique* t. IV (Paris 1911), col. 1348.
3. SCHO, *Monitum*, May 8, 1959, in *AAS* 51 (1959), p. 484.
4. Cf. CONC. TRID., *Sess.* XXIII *de Reformatione*, ch. II.
5. Cf. SCCouncil, "Decisión," August 27, 1592, in *Fontes*, no. 2248.
6. Cf. *Comm.* 10 (1978), p. 183.

3. Paragraph 3 was an independent canon (c. 201) in the previous *schema*,[7] and its antecedent is c. 959 of *CIC*/1917. Firstly, all those who can give dimissorial letters can also confer the sacred orders. This norm assumes that the granter has due jurisdiction. Therefore, auxiliary bishops cannot give dimissorial letters nor proceed with the ordination without a special mandate from the diocesan bishop (see commentary on c. 1018).

Secondly, § 3 establishes the episcopal condition as a requisite to validly ordain (see commentary on c. 1012). Therefore, being bishop and having jurisdiction is necessary and sufficient to issue dimissorial letters and to personally confer the priesthood and/or the diaconate.

7. Cf. ibid., p. 186.

1016 **Episcopus proprius, quod attinet ad ordinationem diaconalem eorum qui clero saeculari se adscribi intendant, est Episcopus dioecesis, in qua promovendus habet domicilium, aut dioecesis cui promovendus sese devovere statuit; quod attinet ad ordinationem presbyteralem clericorum saecularium, est Episcopus dioecesis, cui promovendus per diaconatum est incardinatus.**

In what concerns the ordination to the diaconate of those who intend to enroll themselves in the secular clergy, the proper Bishop is the Bishop of the diocese in which the aspirant has a domicile, or the Bishop of the diocese to which he intends to devote himself. In what concerns the priestly ordination of the secular clergy, it is the Bishop of the diocese in which the aspirant was incardinated by the diaconate.

SOURCES: c. 956

CROSS REFERENCES: cc. 266, 1034

COMMENTARY

Dominique Le Tourneau

1. This canon determines the proper bishop for the ordination to the diaconate and to the priesthood. The following is the text of *Schema* of 1978: "Episcopus proprius, quod attinet ad ordinationem clericorum saecularium, est Episcopus dioecesis, in qua promovendus per diaconatum est incardinatus; quod attinet ad ordinationem eorum qui nondum sunt diaconi et clero dioecesani adscribi intendunt, est Episcopus dioecesis, qua promovendus habet domicilium, aut dioecesis in qua habet originem, aut dioecesis cui, de consensu Episcopi dioecesis domicilii, promovendus sese devovere intendit."

Several emendations were presented: to eliminate the mention of the place of origin as a criterion to limit the proper bishop for ordination; to recognize the freedom of the candidate to choose the diocese; to add a paragraph to specify that for clergy who belong to an institute of consecrated life, the proper bishop is he in whose territory the religious house in which the candidate is enrolled is located; to mention the ordination to the diaconate before that to the priesthood.[1] The first and the fourth of these emendations were received and incorporated in the text of the

1. Cf. *Comm.* 10 (1978), p. 184.

canon whose place was changed for greater clarity. It was placed before the current c. 1017, to which it followed in the *Schema*.

2. The norms of incardination should be briefly recalled here. They are found in cc. 265–266. They establish a clear difference between, the incardination in the hierarchical structures: particular churches (cf. cc. 368 and 372) and personal prelatures (cf. c. 295), and the associative entities: institutes of consecrated life and other societies that have the faculty to incardinate. It is, therefore determined in this way who the proper bishop is in some cases, or in other cases, who the competent authority to give the pertinent dimissorial letters is (see commentary on cc. 265 and 266).

For the ordination to the diaconate of subjects who intend to enroll themselves in the secular clergy, the proper bishop is the bishop of the diocese in which the candidate has his domicile, or the bishop of the diocese to which he intends to devote himself. He is free to choose his diocese. In this second case, the candidate must show his intention and does so in writing in his own hand. Given that one becomes a cleric and becomes incardinated by way of the reception of the diaconate, this written demonstration of the candidate's will is very important (cf. c. 266 § 1). Once the choice has been made, the bishop must admit the candidate to the diaconate, following the dispositions in c. 1034.

The determination of the proper bishop for ordination to the priesthood of the secular deacons is a consequence of the dispositions in the first part of this canon. It will be the bishop of the diocese in which the ordinandi is incardinated by the diaconate. What would happen if the candidate or the bishop changed their intention? This could happen in several situations, but in any case, the deacon would remain incardinated in the diocese in which he received the diaconate, as long as the situation had not been resolved. It could be resolved by an ulterior approval by the bishop to ordain him to the priesthood, by the procedure of excardination and consequent incardination into another entity enabled to incardinate (cf. c. 267 § 1), or by the sentence declaring the ordination null.

In determining the proper bishop, the clergy of religious institutes and societies of apostolic life of diocesan right and secular institutes that do not incardinate in their own institute are put on the same level with the secular clergy (see commentary on c. 1019).

1017 **Episcopus extra propriam dicionem nonnisi cum licentia Episcopi dioecesani ordines conferre potest.**

A Bishop may not confer orders outside his own jurisdiction except with the permission of the diocesan Bishop.

SOURCES: c. 1008; *CD* 11

CROSS REFERENCES: c. 381

COMMENTARY

Dominique Le Tourneau

This canon is based on *Christus Dominus* 11, which states that "[a] diocese is a section of the people of God entrusted to a bishop to be guided by him with the assistance of his clergy." Another conciliar text can be adduced: "Individual Bishops, in so far as they are set over particular churches, exercise their pastoral office over the portion of the people of God assigned to them" (*LG* 23). This norm is related to the wording of c. 381 § 1: "In the diocese entrusted to his care, the diocesan Bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office."

The first draft of this canon, which was approved without any objection,[1] reads as follows: "Episcopus extra propriam ditionem [sic] nonnisi cum licentia loci Ordinarii ordines conferre potest." Aside from the purely orthographical correction (*dicionem*), we observe that "loci Ordinarii" has been substituted by "Episcopi diocesani," since not all the local Ordinaries enumerated in c. 134 can give dimissorial letters (see commentary on c. 1018).

The proposal to change "potest" to "licet," due to the fear that someone could falsely interpret it to mean that the bishop cannot confer orders without permission, was not admitted. It was rejected because this doubt had no foundation, given that here it is not a question of validity.[2]

The Council of Antioch (331) established the rule that the bishop cannot exercise his episcopal functions in a territory other than his own without permission from the bishop of that territory, under penalty of sanction.[3] The Council of Trent was reminiscent of that norm, especially due to the exercise of the pontifical celebrations and the conferral of the orders.[4] The sanctions, however, have disappeared.

1. Cf. *Comm.* 10 (1978), p. 184.
2. Cf. *Comm.* 15 (1983), p. 216.
3. Cf. cc. 13 and 22, collected in c. 9, q. 2, cc. 6 and 7.
4. Cf. CONC. TRID., *Sess.* VI *De reformatione*, ch. V.

1018 **§ 1. Litteras dimissorias pro saecularibus dare possunt:**
1° Episcopus proprius, de quo in can. 1016;
2° Administrator apostolicus atque, de consensu collegii consultorum, Administrator dioecesanus; de consensu consilii, de quo in can. 495 § 2, Pro-vicarius et Pro-praefectus apostolicus.

§ 2. Administrator dioecesanus, Pro-vicarius et Propraefectus apostolicus litteras dimissorias ne iis concedant, quibus ab Episcopo dioecesano aut a Vicario vel Praefecto apostolico accessus ad ordines denegatus fuerit.

§ 1. The following can give dimissorial letters for the secular clergy:
1° the proper Bishop mentioned in can. 1016;
2° the apostolic Administrator; with the consent of the college of consultors, the diocesan Administrator; with the consent of the council mentioned in can. 495 § 2, the Pro-vicar and Pro-prefect apostolic.

§ 2. The diocesan Administrator, the Pro-vicar and Pro-prefect apostolic are not to give dimissorial letters to those to whom admission to orders was refused by the diocesan Bishop or by the Vicar or Prefect apostolic.

SOURCES: c. 958

CROSS REFERENCES: *cc.* 134, 295, 368, 381, 495, 502, 1015

COMMENTARY

Dominique Le Tourneau

1. *Dimissorial letters* is a document that proves the authenticity of two things: the permission granted to a bishop to ordain someone who is not, or who will not be, his subject; and the permission granted to the candidate to receive the orders from a bishop who is not his own (see commentary on c. 1015).

Canon 16 of the Council of Nicea, in a *Decree*, stipulated the nullity of an ordination conferred to anyone who was not a subject of the conferring bishop, without the consent of the proper bishop.[1] To proceed in this way was, at that time, to become an accomplace in a desertion of the

1. D. 71, c. *Si quis*.

cleric from his diocese of origin, given that along with the ordination, the ordained was assigned a certain function in the church of ordination. In other words, it was a matter of what would today be called an incardination without previous excardination.[2]

The first *schema* transcribed the text of c. 958 *CIC*/1917, taking into account the modifications that had already been introduced in the universal legislation of the Church. For this reason, the apostolic Administrator and the diocesan Administrator were spoken of instead of the capitular Vicar. But this text has undergone an important reduction (without the reason for this being known, because the corresponding Acts of the Commission of revision were not published in *Communications*). On the one hand, the reference to the Vicar general disappeared (to which the figure of the recent creation of the episcopal Vicar had been added), "ex speciali tamen Episcopi dioecesani mandato," because in the same way it already appeared in the norm of c. 134 § 3. On the other hand, the mention of the Vicar and of the Prefect apostolic was suppressed, but that of the Provicar and of the Pro-prefect apostolic remained. This is justified because the Vicar and the apostolic Prefect are equivalent only to the diocesan bishop (cf. c. 381 § 2). The express mention of the Abbot or of the Prelate head of his own territory and of the Prelate of a personal prelature, "licet episcopali charactere careant,"[3] disappeared from the same number of § 1 of the *schema* of this canon (c. 199).

2. According to the definitive norm, the following may give dimissorial letters for a candidate for secular clergy: *a*) the proper bishop (see commentary on c. 1016), even if he has not been ordained as bishop yet; *b*) the Prelates who are equivalent in law to the diocesan bishop: the territorial Prelate and Abbot, the apostolic Vicar and Prefect, the apostolic Administrator of a permanently established administration (cf. cc. 368 and 381 § 2); *c*) personal Prelates regarding proper Ordinaries and those of their Vicars to whom the statutes of the prelature confer such power (cf. c. 295 § 1); *d*) the diocesan Administrator, with the consent of the college of consultors (cf. c. 502); *e*) the apostolic Pro-vicar and Pro-prefect, with the consent of the mission council (cf. c. 495 § 2); *f*) the general Vicar and the episcopal Vicar, with a special mandate from the diocesan bishop (cf. c. 134 § 3).

3. Paragraph 2 of c. 1018 prohibits the diocesan Administrator, the apostolic Pro-vicar and Pro-prefect from giving the dimissorial letters to all those to whom the diocesan bishop, or the apostolic Vicar or Prefect, have denied access to the sacred orders. This norm is in accordance with

2. Cf. P. FOURNERET, "Dimissoriales (Lettres)," in *Dictionnaire de Théologie Catholique*, t. April 1911, col. 1348–1352, especially col. 1349.
3. Cf. *Comm.* 10 (1978), pp. 184–185.

the legal principle that does not admit that which has been denied by an authority be granted by an inferior authority with the norm "Sede vacante nihil innovetur" (c. 428 § 1). The new diocesan bishop, or the new apostolic Vicar or Prefect, will judge the suitability of authorizing access to the orders.

The faculty to subdelegate to confer ordination is implicit, since dimissorial letters are not given *in favorem ordenantis* but *in favorem ordinandi.*

1019 **§ 1. Superiori maiori instituti religiosi clericalis iuris pontificii aut societatis clericalis vitae apostolicae iuris pontificii competit ut suis subditis, iuxta constitutiones perpetuo vel definitive instituto aut societati adscriptis, concedat litteras dimissorias ad diaconatum et ad presbyteratum.**

§ 2. Ordinatio ceterorum omnium alumnorum cuiusvis instituti aut societatis regitur iure clericorum saecularium, revocato quolibet indulto Superioribus concesso.

§ 1. The major Superior of a clerical religious institute of pontifical right or the major Superior of a clerical society of apostolic life of pontifical right is competent to grant dimissorial letters for the diaconate and for the presbyterate on behalf of the subjects who have become perpetually or definitively members of the institute or society in accord with their constitutions.

§ 2. The ordination of all other members of any institute or society is governed by the law for seculars; any other indult whatsoever which has been granted to Superiors is revoked.

SOURCES: c. 964 §§ 2 et 4; *CAd* I, 11

CROSS REFERENCES: cc. 265, 266

COMMENTARY

Dominique Le Tourneau

1. Regarding the dimissorial letters for the religious, c. 1019 considers two cases. In § 1, it speaks of the members of a religious institute or of a clerical society of apostolic life of pontifical right, whose incardination is foreseen in the second half of c. 265. The rescript *Cum admotae* already recognized general Superiors of orders, congregations, societies of common life without public vows and secular institutes, as long as they were clerical and of pontifical right. It recognized in the faculty the right to give dimissorial letters to their subjects, with the faculty to subdelegate to other major Superiors, with the consent of their respective councils (*CAd* I, 11).

The use of the term "subjects" was criticized by the revisory commission, but was not removed.[1] Instead, an emendation to substitute "permanenter adscriptis" for "perpetuo et definitive adscriptis" was accepted.[2]

Therefore, it is the major Superior who gives the dimissorial letters for the ordination of his subjects who are members of the institute. This norm is identical to that of c. 964, 3° of *CIC*/1917. It is necessary, however, that the membership be perpetual or definitive, according to the constitutions.

The same thing can be said about members of the secular institutes when, by concession of the Apostolic See, they can be incardinated in the same institute, as is foreseen in cc. 266 § 3 and 715 § 2.

2. Paragraph 2 of the present canon regulates the dimissorial letters for the members of other institutes and societies (institutes of diocesan right, secular institutes in general, lay institutes, even of pontifical right, comprising clergies).

The following was the first wording of the text: "Ordinatio ceterorum omnium alumnorum cuiusvis Instituti vitae consacratae aut Societatis facultate sibi clericos adscribendi donatae, regitur iure saecularium, revocato quolibet privilegio contrario." In order to make it easier to understand, it was changed to the current text,[3] except that in one of the last phases of the work, the noun "clericorum" was added to "saecularium."

With this understanding, the norms established for secular clergy, that are found in c. 1018, are followed. Due to the express disposition of the canon, all indults previously granted to the Superiors are revoked (such a disposition appeared in the parallel c. 964, 4° *CIC*/1917). The indult implied the right to give dimissorial letters for members who were not definitively enrolled in the clerical religious institutes of non- pontifical right or in the societies of apostolic life also of non-pontifical right. It is not entirely clear if this revocation is also extended to the indults granted to the general Superiors and to the religios himself.

1. Cf. *Comm.* 10 (1978), p. 185.
2. Cf. *Comm.* 15 (1983), p. 217.
3. Cf. *Comm.* 10 (1978), pp. 185–186.

1020 **Litterae dimissoriae ne concedantur, nisi habitis antea omnibus testimoniis et documentis, quae iure exiguntur ad norma cann. 1050 et 1051.**

Dimissorial letters are not to be granted unless all the testimonials and documents required by the law in accordance with cann. 1050 and 1051 have first been obtained.

SOURCES: c. 960 § 1

CROSS REFERENCES: cc. 1017, 1019, 1020, 1050, 1051

COMMENTARY

Dominique Le Tourneau

This canon reproduces c. 960 § 1 *CIC*/1917. It was adopted without any change in 1978[1]. The remission to c. 1050 and to the documents which are required there to promote someone to sacred orders was added later. It is not required that these testimonies and documents be annexed, nor that they be mentioned in the dimissorial letters. The consecrating bishop may request them if necessary.

The Council of Trent established that the dimissorial letters could only be granted to clergy *iam probatos et examinatos.*[2] The investigation into the qualities of the candidate in c. 1051 is followed by the testimonials, letters in which a Prelate gives his positive testimony regarding a candidate for ordination. Usually the bishop of origin or of domicile is in a better position to carry out the investigation on the legitimacy and the age of the candidate. The other requisites are appreciated more immediately by the ordaining bishop.

Even if the candidate is *probatum et examinatum* and has received the dimissorial letters from his proper bishop, the bishop who confers ordination may again carry out the investigation and the exam.

The bishop will confer sacred orders only after having received all the certificates and documents required by law.

These testimonies, obtained from the rector of the seminary or by other means, such as testimonial letters, or proclamations, refer to the qualities necessary to receive the order and to the physical and psychological

1. Cf. *Comm.* 10 (1978), p. 186.
2. CONC. TRID., *Sess.* XXIII *De reformatione*, c. *Episcopi*, 3.

health of the candidate. The required documents are: *a*) for the presbyterate, the certificate of ecclesiastical studies and the certificate of having received the diaconate; *b*) for the diaconate, the certificates of baptism and confirmation, of having received the ministries of lector and of acolyte and the declaration of personal freedom and of disposition of full dedication to the ecclesiastical ministry by the candidate; *c*) for the permanent diaconate, where appropriate, the certificates of matrimony and of consent of his wife.

1021 **Litterae dimissoriae mitti possunt ad quemlibet Episcopum communionem cum Sede Apostolica habentem, excepto tantum, citra apostolicum indultum, Episcopo ritus diversi a ritu promovendi.**

Dimissorial letters may be sent to any Bishop in communion with the Apostolic See, but not to a Bishop of a rite other than that of the ordinand, unless there is an apostolic indult.

SOURCES: c. 961; *LG* 22

CROSS REFERENCES: cc. 1017, 1019, 1020

COMMENTARY

Dominique Le Tourneau

In *CIC*/1917, several norms obligate religious Superiors to grant the dimissorial letters in favor of a particular bishop. This discipline was, in fact, somewhat mitigated, due to privileges and due to the tradition that the bishop with the right to confer the ordination should respect the wishes of the religious Superior.

Today it is not necessary for the dimissorial letters to be sent to a particular bishop. It is enough that they be addressed generically to any bishop, with the important provision that it be a bishop in communion with the Apostolic See.

It is to be remembered that, as Vatican Council II affirmed, "[o]ne is constituted a member of the episcopal body in virtue of the sacramental consecration and by the hierarchical communion with the head and members of the college" (*LG* 22), because the "communion" is not "a vague *affection*, but ... an *organic reality*" (*pen* 2).

Canon 1021 foresees *in fine* an exception to the principle that it establishes. These dimissorial letters cannot be sent to a bishop of a rite other than that of the ordinandi, unless an indult from the Holy See had been obtained. This norm is in accordance with the ecclesiology of Vatican II (*OE* 1–5) and with the general norm of c. 1 of *CIC*.

1022 **Episcopus ordinans, acceptis legitimis litteris dimissoriis, ad ordinationem ne procedat, nisi de germana litterarum fide plane constet.**

When the ordaining Bishop has received the prescribed dimissorial letters, he may proceed to the ordination only when the authenticity of these letters is established beyond any doubt whatever.

SOURCES: c. 962

CROSS REFERENCES: c. 1017, 1019, 1020, 1052

COMMENTARY

Dominique Le Tourneau

The terms in this canon were discussed in the working *coetus*. The text being debated had been written in this way: "Episcopo ordinanti constare debet litteras dimissorias, tum pro saecularibus tum pro sodalibus Institutorum vitae consacratae aut Societatum facultate sibi clericos adscribendi gaudentium, esse authenticas atque ad normam iuris concessas."

It was noted that the ordaining bishop should investigate the qualities of the candidate on his own, independently of whether authentic dimissorial letters were issued. Some consultors requested that the ordaining bishop investigate to be sure that the dimissorial letters had been granted *ad normam iuris*. Others were in favor of placing this canon, which they considered to be general in nature, among the general canons.

In view of all these observations, the current text was reached, with a slight variation: "fide plane constet" substitutes "fide dubitare minime possit," which is less precise.[1]

The bishop must abide by the dispositions of c. 1052 § 2 that indicates the elements that should be enumerated in the dimissorial letters for the bishop to proceed with the ordination.

In spite of the legitimacy and authenticity of the dimissorial letters, the ordaining bishop may still have some doubt regarding the suitability of the candidate for ordination. In such a case, he must not ordain the candidate (c. 1052 § 3).

1. Cf. *Comm.* 10 (1978), p. 186.

1023 **Litterae dimissoriae possunt ab ipso concedente aut ab eius successore limitibus circumscribi aut revocari, sed semel concessae non extinguuntur resoluto iure concedentis.**

Dimissorial letters can be limited or can be revoked by the person granting them or by his successor; once granted, they do not lapse on the expiry of the grantor's authority.

SOURCES: cc. 46, 963

CROSS REFERENCES: c. 1017, 1019, 1020

COMMENTARY

Dominique Le Tourneau

Once the proposal to insert the phrase "iuxta causa" after "revocari" had been rejected, the *iter* which the drafting of this canon followed encountered no further difficulties.

This canon deals with the limitations and the revocation of dimissorial letters. The norms transcribe c. 963 *CIC*/1917 almost word for word.

The first part of that canon expresses the right of the bishop (or of his successor) who has given dimissorial letters to revoke or to limit them. There are several types of limitations, such as fixing a time limit, specifying the ordaining bishop, ordering a prior exam of one's aptitude for ordination, and so on. These limitations are to be observed. Dimissorial letters sent without any limitation are indefinitely valid.

The second part of the canon is related to the continuity of the governence of the diocese. According to the general law of cc. 46 and 132 § 2, the dimissorial letters of a previous bishop retain their validity. Therefore, if they still have not been sent they must be valid, unless the successor disposes differently.

Once the dimissorial letters have been given, any changes undergone by the authority who gave them (death,[1] dismissal, transfer, extinction of his right) do not affect the dimissorial letters in any way:[2] this is a *gratia facta* situation.

1. S. Congr. "Of Bishops and Regulars," November 21, 1600, in *Fontes* of the *CIC*/1917, no. 1588.
2. Cf. *VI, Regula iuris*, 16; cf. also c. 78 § 1.

CAPUT II
De ordinandis

CHAPTER II
Those to Be Ordained

1024 **Sacram ordinationem valide recipit solus vir baptizatus.**

Only a baptised man can validly receive sacred ordination.

SOURCES: c. 968; *PO* 2; PAULUS PP. VI, Let. ad Archiepiscopum Cantuariensem: I, 30 nov. 1975 (*AAS* 68 [1976] 599–600); II, 23 mar. 1976 (*AAS* 68 [1976] 600–601); SCDF Decl. *Inter insigniores*, 15 oct. 1976 (*AAS* 69 [1977] 98–99)

CROSS REFERENCES: cc. 124, 842 § 1, 849, 1008, 1025 § 1, 1026

COMMENTARY
Daniel Cenalmor

1. According to the text of the canon, there are two objective requisites of capacity that must be present in the subject to validly receive sacred orders: to be a male and to be baptized. It is not necessary, in principle, to have full possession of one's mental faculties, nor to be of a certain age. However, the sacramental action would not operate in a subject with the use of reason if he willed not to receive the sacrament. Hence, the intentional subjective factor may determine, in certain occasions, the nullity of sacred ordination.[1]

The requisite to be baptized is, without a doubt, of divine law. The sacramental development of Christian life requires the previous birth in the life of grace "ex aqua et Spiritu Sancto" (cf. Jn 3:5). Baptism of desire

1. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 560.

is not enough, a baptism of water is necessary, because this is the gateway to the sacraments, and without it the rest of the sacraments cannot be validly received (cc. 842 § 1, 849).[2] The condition of being faithful (c. 204 § 1) is, in short, prior to that of being sacred minister (c. 1008).

Only those who have been validly baptized can be ordained. In the case that baptism had not been validly received, nor sacred ordination validly received, the acts of the subject which ontologically require the existence of the *sacra potestas* would be null.

2. From the canonical point of view, it has always been unquestionable that only a male human being is capable of receiving the sacrament of orders in any of its degrees, including, therefore, the order of the diaconate. That has been the constant teaching of the ecclesiastical Magisterium. Until this century, this was hardly expressed in formal pronouncements, precisely because it was a matter of an undisputed doctrinal principle and of a law that was not under controversy.[3]

This situation of unquestioning assent, however, is no longer found presently, especially because of the debates and positions adopted by the core of the Anglican Communion, where they came to include the practice of conferring priestly ordination upon women. The ecumenical problems that this poses, and the extent of the discussions on the subject among theologians and in some catholic environments, caused successive interventions by the Magisterium to reiterate and clarify this doctrine and discipline, which have remained constant in the Catholic Church and always faithfully maintained in the eastern churches.[4] Different types of interventions are summarized here. These have culminated lately in the promulgation of the Letter Ap. *Ordinatio sacerdotalis*, with which John Paul II has settled the issue regarding the reservation of the ministerial priesthood to men.

3. When the matter of the ordination of women arose in the Anglican Communion, Paul VI himself decided to personally approach it on several occasions, particularly in some of his letters to the Anglican Primate[5] that reminded him of the Catholic Church's position. "The Church maintains that it is not acceptable to ordain women to the priesthood, for truly fundamental reasons. The following are the reasons: the example of Christ, effected in the Sacred Writings, who only chose men for his Apostles; the constant practice of the Church, which has imitated Christ by choosing only men; and the living Magisterium, which has coherently established

2. Cf. CONC. FLOR., Decr. *Pro Armeniis*, in Dz.-Sch., 1309; CCE, no. 1213.

3. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica...," cit, pp. 560–561.

4. Cf. ibid., p. 561; A. MOLINA, commentary on c. 1024, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 457.

5. Cf. *AAS* 67 (1975), pp. 264–267; 68 (1976), pp. 599–600, 600–601.

that the exclusion of women from the priesthood is in harmony with God's plan for his Church."[6]

However, during the pontificate of Paul VI, the most detailed justification of the practice of only calling men to the sacred orders was given by the SCDF who obeyed the mandate of the Pope himself, in the Decl. *Inter insigniores* (October 15, 1976), approved and ordered to be published by him,[7] reminded us in a summary that "[t]he Church is faithful to the Lord's example, and for this reason does not consider itself to be authorized to admit the ordination of women to the priesthood."[8] This phrase and the entire argument of this document—which only alludes to the priesthood and episcopal orders, seem to imply that the requirement to be male to gain access to the priesthood is of divine law, and that it does not belong, therefore, among the norms of merely ecclesiastical law. This is shown by the fact that the authority of the Church has never dispensed it.

Indeed, when in the Magisterial Declaration it is stated that the Church "does not consider itself to be authorized to admit the ordination of women to the priesthood," it seems to be implicitly indicated that the necessity to be male could be counted among the integral factors of the sacramental sign, which the ecclesiastical authority cannot modify because it belongs to its substance.[9] The Church, as the Declaration continues, has never allowed women to validly receive the priesthood or episcopal ordination. This tradition, which is continuous and universal, has not only obeyed mere cultural conjunctures, but also the desire to remain faithful to the type of priestly ministry that Our Lord Jesus Christ wanted, and that was carefully kept by the Apostles.[10] For all these reasons, the norm of only conferring priestly ordination to men is followed "because it is considered in accordance with God's plan for his Church."[11]

4. The Decl. *Inter insigniores*, after reminding us of this norm and its basis in the permanent value of the attitude of Christ and of the Apostles, who also chose only men as their deacons (cf. Acts 6:1–6), shows the profound suitability that theological reflection reveals between the nature of the sacrament of orders itself, in its specific reference to the mystery of Christ, and the fact that only men have been called to receive priestly

6. Cf. PAUL VI, *Rescript to the letter of the Archbishop of Canterbury, the Most Rev. Dr. F. D. Coogan, regarding the priestly ministry of women*, November 30, 1975, in *AAS* 68 (1976), p. 599.
7. *AAS* 69 (1977), pp. 98–116.
8. Cf. ibid., p. 100.
9. Cf. PIUS XII, Ap. Const. *Sacramentum ordinis* November 30, 1947, in *AAS* 40 (1948), p. 5.
10. Cf. *AAS* 69 (1977), p. 101.
11. Cf. ibid., p. 108.

ordination. It notes that "[i]t is not a matter of presenting a demonstrative argument, but of clarifying this doctrine with an analogy of faith."[12]

The last part of the document is centered on two basic ideas: the sacramental nature of Christian priesthood and the nuptial significance of the salvation offered to men by God.

5. When exercising his ministry, the priest does not act in his own name, but represents Christ, who works through him. This representation of Christ reaches its highest expression and a very particular form in the celebration of the Eucharist, in which the priest acts "in persona Christi," to the point of becoming his own image when he pronounces the words of the consecration. However, if while sacramentally expressing the role of Christ in the Eucharist, this representation were not assumed by a man, it would be difficult to see Christ's image in the minister. In short, there would not be such a "natural resemblance" that all sacramental signs bear, and that the faithful must be able to grasp easily.[13]

Regarding the second argument, the Declaration begins by explaining that the alliance offered to men by God has been assumed since ancient times "the privileged form of a nuptial mystery." This mystery is fully and definitively realized when the plenitude of time is reached, when Christ, the Husband, takes the Church as his wife. It is also congruent with this "nuptial mystery" that the actions which require the character of the ordination and which represent Christ himself, author of the alliance, husband and head of the Church, exercising his ministry of salvation, are to be preformed by a man. This is, of course, unless one failed to recognize the importance of the fact that Christ was a man and the symbolism that this bears in the economy of the revelation.[14]

6. The present norm and the reasons presented here in no way contradict the fundamental equality that exists among all the baptized (c. 208). The fact that only a man can be called to sacred orders "does not reveal in him any personal diversity in the order of values, but only diversity on the plane of functions and of service."[15]

As the Declaration indicates, "equality does not mean identity within the Church, which is a differentiated body in which everyone has his or her own function. There are many roles, which should not be confused, they do not give occasion to superiority of some over others nor do they give a pretext for envy: the only superior charism that should be desired is charity (cf. 1 Cor 12–13). The greatest in the Kingdom of the Heaven are not the ministers, but the saints."[16] And the best proof of this, is precisely

12. Cf. ibid., pp. 108–109.
13. Cf. ibid., pp. 109–110.
14. Cf. ibid., pp. 110–111.
15. Cf. ibid., pp. 111–112.
16. Cf. ibid., p. 112.

that it is a woman who is rightly called the Most Holy Virgin Mary, even though she did not receive the mission which is proper to the Apostles nor the ministerial priesthood.[17]

7. John Paul II, in an attempt to guard the apostolic Tradition and to eliminate a new obstacle to uniting all Christians, again reminded the Anglican Primate of the substance of the presented doctrine.[18] Upon seeing that in our time and in many places, the decision of the Church not to admit women to priestly ordination has not only been considered debatable even in some Catholic circles, or has even been imputed a purely disciplinary value, the Pope definitively settled the matter in his Letter Ap. *Ordinatio sacerdotalis*, addressed to the entire Episcopate, and dated May 22, 1994.[19]

Indeed, after summarizing the reasons presented by Paul VI and by the Decl. *Inter insigniores*, and after emphasizing once again that "not admitting women to the priestly ordination cannot mean that they are of a lessor dignity, nor that they are discriminated against. It is a faithful observance of a disposition which must be attributed to the wisdom of the Lord of the universe." John Paul II concludes the aforementioned document with the following, certainly solemn, words: "Therefore, with the aim of removing all doubt regarding a matter of such importance, that concerns the divine constitution of the Church, in virtue of my ministry of confirming the brothers in the faith (cf. Lk 22: 32), I declare that the Church does not, in any way, have the faculty to confer the priestly ordination to women, and that this report should be considered to be definitive for all the Church's faithful."[20]

As a result, this doctrine must now be classified between the truths concerning the faith and morals that (as indicated in the new §2 of c. 750) must be received and firmly believed in order for one to be able to sacredly guard and faithfully expound the same deposit of faith. Thus anyone who rejected it would be opposing the doctrine of the Catholic Church, and any faithful who, rejecting this proposition, were obstinate, and reprimanded by the Apostolic See or by the ordinary, did not retract (c. 1371, 1°), would be punished with a just penalty.[21]

8. To validly receive the sacrament of orders, it is enough that the subject be male and baptized. This means that, on principle, the intention of the subject is not always necessary for validity of the sacred order. It is possible, in short, that infants, or those similar, could theoretically be

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17. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica...," cit, p. 562; JOHN PAUL II, Litt. Ap. *Ordinatio sacerdotalis*, May 22, 1994, in *AAS* 86 (1994), p. 547.
18. Cf. *AAS* 79 (1987), pp. 184–187.
19. Cf. *AAS* 86 (1994), pp. 545–548.
20. Cf. ibid., pp. 547–548.
21. Cf. John Paul II, m.p. *Ad tuendam fidem*, May 18, 1998; CDF, *Illustrative doctrinal Note of the conclusive formula of "Professio fidei"*, no. 11.

capable of receiving the sacrament, as the common doctrine of theologians and canonists admits. But such an ordination would be, of course, absolutely illicit, and it would not bind the subject to assume the obligations that it bears, unless he ratifies them when he reaches the use of reason and at least the age of majority.[22]

The same doctrine maintains that those who have, at one time, had the use of reason, cannot be validly ordained without their intention, at least habitual (and not rectified), to receive the sacrament. In practice, it would be advisable to wait for that intention to be actual, or at least virtual, since it is logical that the new status and the serious obligations which ordination bears intensely calls for the subject's attention.[23]

It follows that a simulated or feigned ordination, therefore that in which a nonexistent or contrary internal intention (e.g., due to lack of freedom: c. 1026) is externally feigned through the rites, would obviously be a null ordination,[24] even though, validity would have to be presumed in the external forum as long as the lack of internal intention were not proven (c. 124 § 2).[25]

22. Cf. F.M. CAPPELLO, *Tractatus canonico-moralis. De Sacramentis* (Turin-Rome 1950–1958), II, pt. 3rd, no. 358; L. MIGUÉLEZ DOMÍNGUEZ, "El Orden," in *Comentario al Código de Derecho Canónico*, II (Madrid 1963), p. 399.
23. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica...," cit, pp. 562–563
24. Cf. c. 3, X, III, 42; SCHO, March 2,1842, November 26, 1900.
25. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica...," cit, p. 563. See commentary on c. 1026.

1025 **§ 1. Ad licite ordines presbyteratus vel diaconatus conferendos requiritur ut candidatus, probatione ad normam iuris peracta, debitis qualitatibus, iudicio proprii Episcopi aut Superioris maioris competentis, praeditus sit, nulla detineatur irregularitate nulloque impedimento, atque praerequisita, ad normam cann. 1033–1039 adimpleverit; praeterea documenta habeantur, de quibus in can. 1050, atque scrutinium peractum sit, de quo in can. 1051.**

§ 2. Insuper requiritur ut, iudicio eiusdem legitimi Superioris, ad Ecclesiae ministerium utilis habeatur.

§ 3. Episcopo ordinanti proprium subditum, qui servitio alius dioecesis destinetur, constare debet ordinandum huic dioecesi addictum iri.

§ 1. In order lawfully to confer the orders of priesthood or diaconate, it is required that, in the judgement of the proper Bishop or of the competent major Superior, the candidate, having completed the probation in accordance with the law, possesses the requisite qualities, that he is free of any irregularity or impediment, and that he has fulfilled the requirements set out in cann. 1033–1039. Moreover, the documents mentioned in can. 1050 must be to hand, and the investigation mentioned in can. 1051 must have been carried out.

§ 2. It is further required that, in the judgement of the same lawful Superior, the candidate is considered beneficial to the ministry of the Church.

§ 3. A Bishop ordaining his own subject who is destined for the service of another diocese, must be certain that the ordinand will in fact be attached to that other diocese.

SOURCES: § 1: cc. 968, 973 § 3, 974 § 1; *SDO* I–III
§ 2: c. 969 § 1
§ 3: c. 969 § 2; *OT* 20

CROSS REFERENCES: cc. 233, 256 § 2, 257, 265, 269, 270, 271 § 1, 1015–1016, 1019, 1022, 1026, 1028–1029, 1031–1042, 1050–1051

COMMENTARY

Daniel Cenalmor

1. Paragraph 1 of this norm, originally drafted as § 2 of the previous canon,[1] summarizes the canonical requisites that the subject must fulfill in order for the priestly or the diaconal order to be lawfully conferred on him:

a) that, in the judgement of the proper bishop or of the competent major Superior, he possess the requisite qualities (mentioned in cc. 1025 § 2, 1026, 1028–1029, and 1031–1032); that is, in the judgment of the proper Bishop or of the major Superior of a clerical Institute of competent pontifical Law "ratione domicilii" (c. 1016 in connection with cc. 102, 103 and 107 § 1), or those who c. 381 § 2 makes equivalent to the diocesan Bishop. To this we must add the military Ordinariate, the Prelate of a personal prelature and the diocesan Administrator with the consent of the College of consultors (c. 1018 § 1, 2°), in addition to the Vicar general, provided that he has a special mandate.

b) that he is free of any irregularity or impediment (cc. 1040–1042);

c) that he has fulfilled the requirements set out in cc. 1033–1039;

d) that the documents mentioned in c. 1050 be at hand;

e) and that the investigation mentioned in c. 1051 has been carried out.

Although the proper area of all these requisites, and in which they should be guaranteed, is the external forum, their proof cannot always be positive. In order to show the absence of irregularities and impediments to receive the order (cc. 1041–1042), it would be enough to show the lack of reasons or contrary proofs. Hence the present norm, regarding its proof, requires of the proper bishop or the competent major Superior something that should be shared by all of them: that those requisites, understood exactly as they are determined in the following canons, have been proven "ad normam iuris." And a sure guideline for acting in this way is that offered in the circular Letter of the CDWDS *regarding the scrutinies on the suitability of the candidates*, November 10, 1997, which, among other things, details the way to record and file the documentation for each of the scrutinies. It also reminds the unipersonal authority competent for calling the candidates that "it should not proceed by virtue of only its convictions or intuitions, but *must hear the opinions* of persons and Councils and *must not depart from them, except by virtue of very well-founded reasons* (c. 127 § 2, 2°).[2]

1. Cf. *Comm.* 10 (1978), p. 187.
2. *Notitiae* 33 (1997), pp. 495–506; *Comm.* 20 (1998), pp. 50–59.

For the licit reception of the sacred order, the subject, as well as fulfilling the conditions prescribed by the law, must be well disposed in the internal forum, and therefore, in a state of grace. The legislator, however, (as in *CIC*/1917) has not considered it necessary to expressly recall this here, maybe because it is a matter of a prevailing moral requirement, and because its mention may be considered to be included, among the knowledge that the candidates must have concerning the sacrament (c. 1028).

2. The sacrament of orders is not administered primarily for the personal sanctification of those who receive it, but to serve the Church as sacred ministers, bishops and priests, in a special way, "for offering sacrifice and forgiving sins" (*PO* 2b). It is to serve all, with the goal of "each according to his own grade, they fulfil, in the person of Christ the Head, the offices of teaching, sanctifying and ruling" and so they nourish the people of God (c. 1008). Thus it will also be determined that, in the judgment of the same legitimate Superior mentioned in § 1, the candidate "is considered beneficial to the ministry of the Church" (c. 1025 § 2).

In the practice of the first centuries, ordinations were relative: only faithful who were necessary or useful for the different particular churches were admitted to orders, and there they were automatically incardinated. Absolute ordinations, without the destination of a specific ministry, were prohibited as a rule, although the usefulness to or need of the Church at times also justified this type of ordination. The abuses that occurred in this sense resulted in some Councils entirely prohibiting them, to prevent the existence of unattached or transient clerics, without a proper Superior or any pastoral work, with the following deterioration of ecclesiastical discipline. Such was the case of the Council of Chalcedon in 451, and of the Council of Trent. Absolute ordinations were permitted, however, in which at least one title of ordination was required. This title was to be consistent, generally, for seculars, in a benefice, patrimony or pension. And when absolute ordinations became more and more frequent, the concepts of usefulness and necessity for the Church began to be seen in relationship especially to the existence of vacancies. That usefulness or necessity was referred to the situation of the diocese in which the clerics had to be enrolled.[3]

The promulgation of *CIC*/1917, prohibited the existence of unattached or transient clerics (cf. *CIC*/1917, c 111 § 1), and always required the existence of a title of ordination (*CIC*/1917, cc. 979–982). After this, the appearance of the title of ordination of service to the diocese, which its c. 981 considered to be supplementary, made the rest disappear, and the use of the titles of benefice, patrimony or pension became very uncommon. The necessity or usefulness for the Church continued, however, to

3. Cf. J.M. GONZÁLEZ DELVALLE, commentary on c. 1025, in *Pamplona Com*; T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 564.

be determined mainly in relationship to the vacancies in the particular church, in compliance with its c. 969 § 1, where it warned that "it cannot be admitted that a secular is ordained, if there is no necessity or need for the Church or the diocese."

The *CIC* no longer requires the existence of a title of ordination, whose purpose has been entirely absorbed in the institute of incardination. Yet, the teachings of Vatican II on the universality of the mission of the priesthood and the solicitude for all Churches that is acquired by means of the sacrament of orders, have also helped, in the current norms, to restore its original pastoral sense of incardination. It is not a simple link of submission to a bishop, but the incorporation to a certain ecclesiastical structure in order to serve, through it, the universal Church; hence this structure should also have the flexibility and mobility that the pastoral requirements demand.[4]

In view of all this, it is understood that, currently, the necessity or usefulness for the Church should not be valued only in relationship to one's own particular church, but also in relationship to the necessities of the universal Church, as is stated in cc. 233, 256 § 2, 257, 270 and 271 § 1. And it is not unsuitable, therefore, that the ordinations surpass the objective necessities of a specific community, unless the candidates can only be promoted to a specialized ministry, or if they are not disposed to exercise the sacred ministry outside their own particular church. In this respect, however, it should be kept in mind that the formation of students of the seminary "is to ensure that they are concerned not only for the particular church in which they are incardinated, but also for the universal Church, and that they are ready to devote themselves to particular churches which are beset by grave needs" (c. 257 § 1)[5].

The content of §§1 and 2 of c. 1025 is as applicable to secular clergy as to all other types of clergy. This does not in any way affect the continual practice of many institutions, in which, since times long past, access to the priesthood has been part of the vocation of determined categories of members, as has occurred with monks.

In fact, the reception of the sacred order is sufficiently justified in these cases, regarding its usefulness for the Church, because it allows the celebration of the Eucharistic Sacrifice,[6] although it does not carry a specific pastoral task nor one of healing souls. It must not be forgotten that it is due to the Eucharist that "the Church continually lives and grows," "and the building up of the body of Christ is perfected" (c. 897); and that the

4. Cf. T. RINCÓN-PÉREZ, commentary on the chapter *De clericorum adscriptione seu incardinatione*, in *Pamplona Com.*

5. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica...," cit., p. 564; A. MOLINA, commentary on c. 1025, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 457.

6. Cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 1025, in *Pamplona Com.*

non-violent renewal of the Sacrifice of the Calvary is, furthermore, the fundamental purpose for which Christ has instituted the priesthood.

Finally, when § 3 of this canon establishes that "a bishop ordaining his own subject who is destined for the service of another diocese, must be certain that the ordinand will in fact be attached to that other diocese," it tends to prevent the faculty which the current legislation provides to choose the proper bishop (c. 1016), and even for excardination and new incardination (cc. 267–270), or for transfer (c. 271), from giving cause to the existence of unattached clerics, or to those without the destination of a specific pastoral ministry. This danger could easily occur in what is described in the present § 3, at least in practice, if the timely precautions had not been taken to guarantee the effective incardination of the candidate to that other diocese, as well as his transfer there within a reasonable period of time.

ART. 1
De requisitis in ordinandis

ART. 1
The Requirements in Those to be Ordained

1026 **Ut quis ordinetur debita libertate gaudeat oportet; nefas est quemquam, quovis modo, ob quamlibet causam ad ordines recipiendos cogere, vel canonice idoneum ab iisdem recipiendis avertere.**

For a person to be ordained, he must enjoy the requisite freedom. It is absolutely wrong to compel anyone, in any way or for any reason whatsoever, to receive orders, or to turn away from orders anyone who is canonically suitable.

SOURCES: c. 971; *OT* 6; SCDS Decr. *Ut locorum Ordinarii*, 9 iun. 1931 (*AAS* 23 [1931] 459–473)

CROSS REFERENCES: cc. 124 § 2, 125, 219, 290, 1025 § 1, 1030

COMMENTARY

Daniel Cenalmor

1. The necessity to enjoy the requisite freedom in order to receive the sacrament of orders, and the two prohibitions that are transcribed in this canon are based, as a last resort, on the nature of holy orders, understood as a gift from God to which the subject should respond freely, with respect for human freedom (cf. *GS* 17 and 26; *DH* 1 and 2), and for the dignity and freedom of the baptized person (cf. *LG* 9 b). They can also be explained more immediately, as a basic fundamental right of the faithful to be immune to any coercion in the choosing of his state in the Church (c. 219). A decision that changes people's lives and that brings with it important duties that the rest of the faithful do not have, cannot be imposed in any way, but has to be assumed with complete freedom.

The freedom to embrace or not to embrace the condition of clerical life must be absolute. The words "in some way, in some motive," already transcribed in *CIC*/1917 (c. 971) attest to this. Hence, it can be considered that the old argument concerning whether someone who is endowed with the appropriate qualities could be legitimately bound by the ecclesiastical Superior to assume that condition was fully settled. On the other hand, although the penalty of excommunication established by *CIC*/1917 for those who compel another person to embrace this state had disappeared (c. 2352), the recent formalization of the right to freedom in the choice of one's state in the Church (c. 219), because of its constitutionality, has given this norm such solid support that it does not allow it to be susceptible to any exception or dispensation whatsoever.[1]

Therefore, neither the mandate of the Superior, nor the moral obligation to follow the divine vocation, nor the necessity of the Church are valid reasons to sustain any title of juridical obligation to accede to holy orders.[2] And in the case in which someone believed that he was compelled to receive the sacrament or to abstain from being ordained, he would have to elucidate it before his conscience, but without any external coercion of any type.[3]

2. Anything that implies coercion, in a broad sense, and which could be exercised, "in any way," is illicit in this matter. And such coercion could even cause the invalidity of the ordination if it were to go so far as to determine that the will of the subject nullified the human act, or forced him to externally simulate or feign his ordination, excluding the intention to receive the sacrament (see commentary on c. 1024).

It is evident that physical or external violence, which could not have been withstood, is to be considered to be sufficient cause for a null ordination, so that its obligations would not be assumed (c. 125 § 1). Its validity could immediately be impugned (cc. 290,1°, 1708–1712); CDWDS is competent to judge this matter (cf. *PB* 68).

On the other hand, a more complex case is that of the intimidations that, while also damaging freedom, do not necessarily suppress it. This, for example, is the case of serious fear which has been unjustly instilled that would bring someone to be ordained because of the threat of evil. If the subject, to avoid this evil, had feigned his consent or intention to receive the sacrament, his ordination would be null, and, as in the previous supposition, he would have to impugn it. But if the fear only made him accept the ordination, having any type of will in favor of it, then it would be

1. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 565.

2. Cf. ibid.

3. Cf. L. MIGUÉLEZ, "El Orden," in *Comentario al Código de Derecho Canónico*, II (Madrid 1963), pp. 402–403.

valid, although he could then request the loss of clerical status in accordance with c. 290, 3°. In either of the two cases, the subject should observe the obligations that go with Orders, different from what was foreseen in c. 214 of *CIC*/1917, until the second sentence declaring the nullity of ordination had been given (c. 1712), or, if the ordination had been considered to be valid, the rescript of the Apostolic See mentioned in c. 290, 3° had been given. And furthermore, it should not be forgotten that in this last supposition, the loss of the clerical state would be a grace (whose processing corresponds to the),[4] and is not the fruit of a judicial or administrative process, as is that which declares the nullity of the ordination (cc. 1708–1712)—. Nor should it be forgotten that its concession "does not entail a dispensation from the obligation of celibacy, which is granted by the Roman Pontiff alone" (c. 291), by means of a procedure which is regulated by the Instruction of October 14, 1980 of the SCDF.[5]

3. The prohibition of turning away a candidate from orders who is canonically suitable, as well as that of compelling anyone to embrace the clerical state, was already clearly on record in *CIC*/1917 (c. 971). In the current discipline it is even supported, as has already been indicated, by a fundamental right.

In fact, although the right to freedom of choice of one's state in the Church does not imply an unconditional possibility of reaching the condition of life that each person desires for himself, neither it does specifically mean that there is a subjective right to be ordained and to assume in this way the condition of clergy. Apart from divine vocation and the canonical requisites for the subject, the call of legitimate authority determines that he has the right and the duty to make the necessary judgement on the suitability of the faithful's aptitude to exercise that ministry (cc. 1025, 1029). For this reason, in virtue of the cited right and as the required personal conditions are fulfilled, one may speak of a right to request the sacrament, of a correlative duty to provide just means to heed that petition, right and duty that are also issued from the denominated "right to petition" (c. 212 § 2), and of a duty not to put any unfair obstacles before its actuation (cf. c. 219).

The obligation not to impede the reception of the diaconate or of the priesthood to anyone who is canonically suitable falls on all the faithful, but especially on those who promote the vocations and formation of candidates for the holy orders: diocesan bishops and their equivalent in law, the formation faculty of seminaries and novitiates, parish priests and priests in general, educators and christian families (c. 233 § 1). Of course,

4. Cf. *Notitiae* 25 (1989), pp. 485–486.

5. Cf. J.M. GONZÁLEZ DELVALLE, commentary on c. 1026, in *Pamplona Com*; A. MOLINA, commentary on c. 1026, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 458.

this obligation only affects the proper bishop and the competent major Superior when they elucidate admission to the sacrament (c. 1029) to the rector of the seminary or of the house of formation when he gives judgement on the suitability of the candidate (c. 1051, 1°).

Canon 1030, finally, will press this duty even more when it is about deacons destined to the priesthood.

1027 **Aspirantes ad diaconatum et presbyteratum accurata praeparatione efformentur, ad normam iuris.**

Aspirants to the diaconate and the priesthood are to be formed by careful preparation in accordance with the law.

SOURCES: c. 972; *SC* 129; *OT* 6–11, 19, 20; *PO* 18, 19; *SDO* 6, 9, 14, 15, 26; *RFIS*

CROSS REFERENCES: cc. 217, 232–264, 659 § 3, 1025 § 1, 1028, 1029, 1032, 1035 § 1, 1039

COMMENTARY

Daniel Cenalmor

1. This canon, like the two previous and the rest of the canons in art. 1, even though referring to a requirement which the candidate must fulfill (his careful preparation for the consecration and the mission that are proper to the order that he wants to receive) is immediately addressed to those who are mainly responsible for its verification. Therefore, in accordance with the teachings of the *PDV* regarding directors of the priestly formation, the subjects of the obligation mentioned in it are: the Church and the bishop, in the first place; the educational community of the seminary (or of the house of formation), which refers to different formation faculty (the rector, the spiritual director, the superiors and professors), the professors of theology. In the largest sense are meant the family, the parochial community and youth associations and movements (cf. *PDV* 65–68); and finally, the candidate for the sacred order, "a necessary and irreplaceable agent in his own formation" (*ibid.*, 69).

Candidates for the diaconate or the priesthood should receive careful preparation in the centers which have been established for this end, in accordance with the universal and particular norms that regulate the formation of clerics.

2. The major seminary, and similarly, the religious house of formation, is to continue to consider itself *necessary* for the preparation of the candidates for the priesthood, as Vatican II categorically affirmed (cf. *OT* 4a). John Paul II restates this in *PDV,* which transcribes the following proposition of the Synod: "The institution of the major seminary, is the best place for formation. It is certainly to be reaffirmed as the normal place, in the material sense as well, for a community and hierarchical life, indeed as the proper home for the formation of candidates for the

priesthood, with superiors who are truly dedicated to this service. This institution has produced many good results through the ages and continues to do so all over the world."[1]

The necessity for a major seminary does not mean, however, that all the candidates for the priesthood must pass through it. There have always been priestly vocations that surface when the person has reached adulthood, for which it is not possible, and frequently not even suitable, to follow the educational itinerary of the major seminary. As the Apostolic Exhortation indicates, for those vocations, it should instead be planned for the candidate "to accompany them with formation in order to ensure, bearing in mind all the suitable adaptations, that such persons receive the spiritual and intellectual formation needed (cf. RSF,19). A suitable relationship with other candidates to the priesthood and periods spent in the community of the major seminary can be a way of guaranteeing that these vocations are fully inserted in the one presbyterate and are in intimate and heartfelt communion with it" (*PDV* 64).

As canon 236 indicates, young men who aspire to the permanent diaconate are to be formed by living "for at least three years in a special house unless the diocesan bishop decides otherwise for grave reasons." However, it is enough that men of a more mature age, whether celibate or married, "spend three years in a program determined by the Conference of Bishops."

Finally, minor seminaries, which aim to keep and develop budding priestly vocations in the preadolescent years or in the first years of youth, should also be considered a proper environment for the priestly formation. If there is no possibility of having a minor seminary, "necessary and very useful in many regions," other "institutions" must be created, such as *vocational groups*, which help to follow the vocational itinerary of the adolescents that are in search of the vocation or that have decided to follow it, but are bound to delay their enrollment in the major seminary due to different circumstances (cf. *PDV* 63–64).

3. The universal norms that regulate the formation of clergy, the content of, and the ways of carrying them out, must be adjusted to meet the needs of each case and is found mainly in cc. 232–264 of *CIC* and in its sources: *Optatam totius*, Sacred Congregation for Catholic Education, and other conciliar and magisterial documents in which the criteria for the figure of the sacred minister and its preparation are given. Due to its more recent and exhaustive nature, *PDV* also has exceptional importance in the case of the presbyters. This is because it is dedicated to the formation of priests in the current situation, and because it proposes, among other things, precise indications and principles for the human, spiritual, intellectual and pastoral formation of the candidates to the priesthood. In the

1. "Propositio 20," in *PDV*, 60.

case of the permanent deacons, the *Ratio fundamentalis diaconorum permanentium* (February 22, 1998), of the CdIC, and the *Directorium pro ministerio et vita diaconorum permanentium* (February 22, 1998), of the CpC should also be taken into account. It should not be forgotten, regarding the intellectual or philosophical-theological formation, that the dispositions of *SapChr*, which are applicable to candidates to Holy Orders, can be carried out outside the seminary. And furthermore, it should be taken into account that the CCE has assigned normative competencies for this entire matter (cf. *PB* 112–116).

Finally, in the particular norms, which should be in accordance with the universal norms, the proper rules of each seminary are to adapt themselves to the plans for priestly formation for each nation, elaborated by the Conferences of Bishops and approved by the Holy See (c. 242 § 1). Similarly, in the formation of candidates to the permanent diaconate, the corresponding norms of the Conferences of Bishops will be followed (c. 236).

In Spain, the XLIV plenary meeting of the Conference of Bishops of April 24, 1986 approved a new *Plan for Priestly Formation for Major Seminaries*. This text, after being approved for a period of six years by the SCCE in Decree of July 4, 1986,[2] was revised by the CBS in its LXV plenary meeting (February 12–16, 1996) and recognized and approved "ad sexenium" by CCE through a decree of May 8, 1996.[3] Previously, the XXVII plenary meeting (November 21–26, 1977) had given some *practical norms for the establishment of the permanent diaconate in Spain*, which were ratified after the promulgation of the new Code in its General Decree I.[4] Finally, on October 1, 1991, the *Plan for Formation for Minor Seminaries* approved in the LIV plenary meeting went into effect.[5]

2. Cf. *BOCEE* 11–12 (1986), pp. 118–168.
3. Cf. *BOCEE* 51 (1996), pp. 115–165.
4. Cf. *BOCEE* 3 (1984), pp. 105–110.
5. Cf. *BOCEE* 32 (1991), pp. 131–155.

1028 **Curet Episcopus dioecesanus aut Superior competens ut candidati, antequam ad ordinem aliquem promoveantur, rite edoceantur de iis, quae ad ordinem eiusque obligationes pertinent.**

The diocesan Bishop or the competent Superior must ensure that before they are promoted to any order, candidates are properly instructed concerning the order itself and its obligations.

SOURCES: SCDS Instr. *Quam ingens*, 27 dec. 1930 (*AAS* 23 [1931] 120–129); SCRit Instr. *Quantum religionis*, 1 dec. 1931 (*AAS* 24 [1932] 74–81); *OT* 9–12, 19–21; *SDO* 14

CROSS REFERENCES: cc. 247 § 2, 273–289, 843, 1025 § 1, 1026, 1027, 1029, 1036

COMMENTARY

Daniel Cenalmor

1. A specific aspect of the formation of the candidates to the diaconate or to the priesthood is that of the due instruction about everything that refers to each order and the duties that come with it. This aspect concerns the integrity of the state of freedom of the candidate (c. 1026), and, more generally, the licit and fruitful celebration of the sacrament.

Indeed, given that the freedom to be ordained presumes that the candidates at least essentially know what they are about to do and to what they are committing themselves, such instruction is necessary for a fully responsible decision to be made. Without making excessive requirements, the *nihil volitum nisi praecognitum* principle is also valid here.[1] But furthermore, as occurs with the other sacraments which are administered to subjects who have reached the use of reason, that preparation is required at some length for the fruitfulness and liciety of the rite (c. 843 § 2).

2. It seems to us that the following is the knowledge that candidates to the diaconate or to the priesthood should possess regarding the order to which they aspire and the obligations that come with it: the fundamental doctrine of the Church on the nature and effects of the sacrament; that which regards the way in which it is received, (basically, the conditions for validity and liciety), and the main obligations that the ordination bears.

1. Cf. K. LÜDICKE, commentary on c. 1028, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), p. 1028/1.

Among these it seems logical to emphasize those whose nature is irrevocable and the rest whose faithful fulfillment also result in attitudes that are positive and permanent in the sacred minister's life. We do not think, however, that it should be required that the candidates know the totality of the obligations that, in virtue of universal or particular law, they will acquire with ordination. This is because we think that it is enough to have a generic knowledge of and a suitable disposition to experience some of these obligations, without undervaluing their importance.

The Instr. *Quam ingens* (December 27, 1930) and *Quantum religionis* (December 1, 1931), quoted in the sources of the canon, prescribed that before being ordained candidates were to sign a declaration in their own handwriting, and reinforced under oath, stating that they knew well the obligations of the diaconate or priesthood that they were going to receive and that they were committed to fulfilling them. This declaration is not specifically required in the new Code; but the circular Letter of the CDWDS *regarding the scrutinies on the suitability of the candidates*, November 10, 1997, provides that, before the ordination of a deacon and of the ordination of a presbyter, the candidates must issue "a *personal declaration on their freedom to receive Sacred Ordination and regarding their clear conscience with respect to the obligations and* commitments that this involves for life, especially regarding the sacred celibacy (c. 277 § 1) in the case of those who are not called to the permanent diaconate when already married. This declaration must be handwritten and expressed in their own words, not copied from a form" (cf. cc. 1026, 1028 and 1036).[2]

3. Ultimate responsibility for the fulfillment of the requisite qualifications in this norm falls to the candidate's competent Superior or diocesan bishop. However, during the candidate's formation stage in the Seminary, that responsibility is also the responsibility of the formation department, as is issued in cc. 244–258. Canon 247 § 2 is particularly explicit in this sense; it speaks, with words taken almost literally from *OT*, 9, of the necessity that "students should be informed of the obligations that they are undertaking, and no difficulty of the priestly life should be concealed from them."

Therefore, the instruction in the seminary or in the house of formation, collective or individualized, is to necessarily include all these contents, giving them due importance; and it is immediately incumbent on the Rector to guarantee it.

2. *Notitiae* 33 (1997), p. 503; *Comm.* 20 (1998), p. 5.

1029 **Ad ordines ii soli promoveantur qui, prudenti iudicio Episcopi proprii aut Superioris maioris competentis, omnibus perpensis, integram habent fidem, recta moventur intentione, debita pollent scientia, bona gaudent existimatione, integris moribus probatisque virtutibus atque aliis qualitatibus physicis et psychicis ordini recipiendo congruentibus sunt praediti.**

Only those are to be promoted to orders who, in the prudent judgement of the proper Bishop or the competent major Superior, all things considered, have sound faith, are motivated by the right intention, are endowed with the requisite knowledge, enjoy a good reputation, and have moral probity, proven virtue and the other physical and psychological qualities appropriate to the order to be received.

SOURCES: cc. 968 § 1, 973 § 3, 974 § 1; SCDS Instr. *Quam ingens*, 27 dec. 1930 (*AAS* 23 [1931] 120–127); SCRit Instr. *Quantum religionis*, 1 dec. 1931 (*AAS* 24 [1932] 74–81); *SC* 9; *LG* 41; *OT* 6, 8–12; *PO* 12, 15–19; *SDO* 8, 11–13; *RFIS* 11; *AP* I, b

CROSS REFERENCES: cc. 259 § 2, 1025, 1027–1028, 1030–1032, 1041, 1042,3°, 1051–1052

COMMENTARY

Daniel Cenalmor

1. The call to the sacred ministries presupposes above all a divine vocation, a charismatic call by which God destines someone for the condition of clerical life and prepares him with the necessary ways to reach this end. At the same time, however, it is Divine Providence "which endows with appropriate qualities and helps with divine grace those who have been chosen by God to share in the hierarchical priesthood of Christ," and that "entrusts to the lawful ministers of the Church the task of judging the suitability of candidates seeking this exalted office with right intention and full freedom, and, after they have been approved, of calling and consecrating them with the seal of the Holy Spirit to the worship of God and the service of the Church" (*OT* 2). Hence, the divine vocation ends up being a canonical vocation, and one in which the legitimate authority must verify the authenticity of the signs of a divine vocation and call the one chosen to sacred orders.[1] No one has a "definitive and operant vocation without

1. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), pp. 566–567.

the proof and acceptance of the one in the Church who has the power and the responsibility of the ministry for the ecclesiastical community. Therefore, the Church authority must determine, in accordance with the times and places, who should be the men and what their requisites should be to be considered suitable for religious and pastoral service of the Church."[2]

Many of the requisites, summarized in c. 1025 § 1, which the proper bishop or the competent major Superior must verify in order to admit a candidate to the order, are canonically objectifiable, to the extent that their verification is regulated by the Law (cc. 1031–1042, 1050). Others however, due to their nature, greatly escape the juridical determination, and must be valued according to the prudent judgement of the same authority, who disposes of a certain margin of discretion for this. To this last group belong, as well as the requisite mentioned in c. 1025 § 2, the endowments or qualities of personal suitability required in this canon, closely related to the divine vocation of the candidate, and which must be held as the first and most fundamental requisite of suitability.

2. When enumerating the many aspects that the proper bishop or the competent major Superior should prudently judge in order to value the suitability of a candidate to the sacred ministries, the original *schema* for this prescription only alluded to a good reputation, moral probity, and other physical and psychological qualities appropriate to the order to be received. It did not, however, mention the right intention, or the requisite knowledge, or the virtues that must grace the candidate, nor his sound faith. The *Coetus* de Sacramentis added all that to the text of the canon in sessions of 6–10.II and 13–18.III of 1978.[3] However, the said *Coetus*, in the first of those sessions, did not admit the suggestion to require a consultation concerning the candidate with the presbyteral council and the pastoral council, nor was reference made to theological-pastoral formation, presumably because it was already included in the due knowledge.[4] The *Schema* of 1982, by placing "sound faith" before the rest of the qualities, would finally present such qualities in their current order, in which we will proceed to comment on them, taking into account the opinions contained in Appendix V of the circular Letter of the CDWDS of November 10, 1997, *regarding the scrutinies on the suitability of the candidates.*[5]

3. Although faith can also be considered to be one of the proven virtues that the candidate must have, the fact that it has been expressly quoted here, together with the adjective "upright," indicates firstly, that the faith in an objective sense must be valued. Called to announce the gospel

2. Cf. PAUL VI, Enc. *Sacerdotalis caelibatus*, June 24, 1967, no. 15, in *AAS* 59 (1967), pp. 662–663.
3. Cf. *Comm.* 10 (1978), pp. 190–191 and 197.
4. Cf. ibid., p. 191; E.J. GILBERT, commentary on c. 1029, in *The Code of Canon Law. A Text and Commentary* (New York 1985), p. 725.
5. *Notitiae* 33 (1997), pp. 504–506; *Comm.* 20 (1998), pp. 57–59.

(c. 757), and to arouse and enlighten the faith of the faithful (c. 836), the future sacred ministers must not only be immune to heresy, apostasy, or schism, crimes that constitute irregularities with regards the reception of orders (c. 1041, 2°), they also must have *upright faith*. This includes, but is not limited to: knowledge and love of orthodox Catholic doctrine, firm convictions regarding positions contrary to the magisterium that are today supported by certain groups, such as, for example, the radical ideologies, the ordination of women, certain opinions regarding sexual morality or ecclesiastical celibacy. Lastly is included an understanding of the nature and objective of the ecclesiastical ministry that is received through the sacrament of the order.[6] Because of this, it is understood that c. 833, 6° binds those who will receive the order of the diaconate to profess their faith.

The *right intention,* understood as the "manifest and resolute will, with which one wishes to give oneself entirely to the divine service,"[7] is another key point with which to judge the aptitude of a faithful to receive the sacrament of the order and the truth of the divine call.[8] The sacred minister's choice must be in accordance with its fundamental purpose: "each according to his own grade, they fulfill, in the person of Christ the Head, the offices of teaching, sanctifying and ruling, and so they nourish the people of God" (c. 1008). He must not, therefore, be motivated by reason of personal usefulness, but "by the sole and noble desire to give himself entirely to the service of God and the salvation of souls."[9] It is, furthermore, suitable to keep in mind that an error in this point would easily incur unfortunate consequences in the individual's life and in the ecclesiastical community.[10]

4. The *requisite knowledge* that must logically be greater in those who aspire to the priesthood than in the candidates to the permanent diaconate can in principle be presumed once the candidate has completed the courses and exams required by universal and particular Law (c. 1032). The fact that he has passed those courses does not always guarantee the fulfillment of this condition of suitability, however, if the proper bishop or the competent major Superior considers it to be appropriate, a more personal verification can and even should be undertaken.

5. Enjoying *a good reputation and having moral probity,* as well as *proven virtue,* are also important factors for admitting a candidate to the order. Every sacred minister performs a public role in the Church, and this requires him to be a credible figure before the people of God. And he is bound by specific reasons, the consecration and mission that arise from

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6. *Notitiae* 33 (1997), p. 504; *Comm.* 20 (1998), pp. 57–58.
7. PAUL VI, Litt. Ap. *Summi dei Verbum,* November 4, 1963, in *AAS* 55 (1963), p. 987.
8. Cf. PIUS XI, Enc. *Ad catholici sacerdotii,* December 20, 1935, in *AAS* (1936), p. 40.
9. Ibid.
10. Cf. K. LÜDICKE, commentary on c. 1029, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), p. 1029/1; E.J. GILBERT, commentary on c. 1029, cit., p. 725.

the order, to have a holy life (c. 276 § 1) and to reach "the perfection of He whose tasks he performs."[11]

More precisely, it must be proven that the candidates to the priesthood are suitably prepared to observe chaste celibacy (c. 277), and that all future clergy are equally well disposed to obey their Superiors, as it applies to them (cc. 273, 274 § 2). Of course, love for the Church and brothers, and charity in general, the proper virtues of spiritual life and other supernatural virtues, and human virtues. These include such virtues as "sincerity, diligence, wisdom, honesty, constancy, firm convictions, spirit of sacrifice, helpfulness, an ability to coexist and work together with others,"[12] upon which the ministry is also supported and the life of grace must not be forgotten. These are not only distinguished pieces of the formation which the candidates receive (cc. 244–247; *OT* 8–12), but they must have been sufficiently deep-rooted in them in order to consider them suitable.

6. Regarding the *other physical and psychological qualities necessary for the order to be received*, it is understood that the suitability of the candidate will depend in the first place on his state of health, which the rector of the seminary or of the house of formation must certify (c. 1051, 1°).Suitability also depends on his affective maturity, his ability to adapt, his ability to carry the burden of his pastoral responsibilities, his disposition for communication, etc. (*PDV* 43–44).[13]

The irregularity due to physical defects (cf. c. 984, 2° *CIC*/1917), which does not imply that adequate bodily health is not required (*OT* 6), has disappeared from the *CIC*, and, on the contrary, psychic illnesses are given much importance (c. 1041, 1°). This indicates the particular attention that should be paid to the latter, and in general, to the health, mental stability and psychological conditions of the candidates, even from the beginning of the period of formation.[14]

7. The proper bishop or the competent major Superior should evaluate all the aforementioned qualities, not individually but altogether. He should use his personal judgement (albeit, as will be seen, without ruling out appropriate advice), based on his direct knowledge of the candidates and on the reports that he has received about them from those who are responsible for their immediate formation (cc. 259 § 2, 1051–1052). He should do this in such a way that the suitability of the candidate is positively proven (c. 1052 § 1). It is not enough, therefore, that there not be anything against him.[15]

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11. Cf. *PO* 12/a; E.J. GILBERT, commentary on c. 1029, cit., p. 725.
12. *Notitiae* 33 (1997), p. 504; *Comm.* 20 (1998), p. 57.
13. Cf. K. LÜDICKE, commentary on c. 1029, cit., p. 1029/2.
14. Cf. E.J. GILBERT, commentary on c. 1029, cit., p. 725.
15. Cf. K. LÜDICKE, commentary on c. 1029, cit., p. 1029/2; A. MOLINA, commentary on c. 1029, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 459.

Given the grave responsibility that falls on him, the proper Bishop or the competent major Superior must take care that his judgment be truly prudent. And to this end, in addition to considering the opinion on the suitability of the candidate issued in the reports prepared by those responsible for their immediate formation, it is appropriate for them to make use of the advice of a "Council of Orders and Ministers," the constitution and conduct of which are outlined in *Appendix III* of the circular Letter *regarding the scrutinies on the suitability of the candidates*, the recommendation of which, without being binding for the Bishop or competent major Superior, would be an *act of high moral* value, which they could not do without unless for grave and very well-founded reasons (cf. c. 127 § 2, 2.°).[16] As for the rest, even if the normative principle of c. 973 § 3 of *CIC*/1917 has disappeared from the *CIC*, according to which the bishop "is not to confer Holy Orders on anyone if he is not morally certain, based on positive proof, of the canonical suitability of the candidate, in other words, not only concerning a grave sin, but the fear of someone being responsible for someone else's sin," the moral nature of which principle remains fully in force. Regarding this, it is also suitable to recall what the last Council taught: "Notwithstanding the regrettable shortage of priests, due strictness should always be brought to bear on the choice and testing of students. God will not allow his Church to lack ministers if the worthy are promoted" (*OT* 6).

In any case, the necessary suitability does not imply ideal perfection. After all, the sacred minister is a man taken from among the rest who, like any other, will have to strive his entire life in a continuous process of conversion. For this reason, it seems important to us to keep in mind that the prudence of the legitimate authority also manifests itself when, once the signs of divine vocation have been discovered in the candidate, that authority generously receives this vocation and facilitates, supports, and is grateful for, the priceless "gift" for the Church, which supposes each vocation, and adds to the divine call the humble but necessary reconfirmation of the "canonical vocation."[17]

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16. *Notitiae* 33 (1997), pp. 502–503; *Comm.* 20 (1998), pp. 55–56.
17. Cf. E. DE LA LAMA, "¿Vocación divina o vocación eclesiástica? Una dialéctica superada para explicar la naturaleza de la vocación sacerdotal (II)," in *Ius Canonicum* 31 (1991), pp. 454–455.

1030 **Nonnisi ex causa canonica, licet occulta, proprius Episcopus vel Superior maior competens diaconis ad presbyteratum destinatis, sibi subditis, ascensum ad presbyteratum interdicere potest, salvo recursu ad normam iuris.**

Only for a canonical reason, even one which is occult, may the proper Bishop or the competent major Superior forbid admission to the priesthood to deacons subject to them who were destined for the priesthood, without prejudice to recourse in accordance with the law.

SOURCES: c. 970; SCDS Instr. *Quam ingens*, 27 dec. 1930 (*AAS* 23 [1931] 120–129); SCRit Instr. *Quantum religionis*, 1 dec. 1931 (*AAS* 24 [1932] 74–81); *SS* 2

CROSS REFERENCES: cc. 212 § 2, 219, 1025 § 1, 1026, 1029, 1040–1042, 1331–1333, 1391, 1395, 1732–1739

COMMENTARY

Daniel Cenalmor

1. Reception of the sacrament of orders, in any of its grades, is not a strict right to which he who subjectively feels that he has been called by God to the sacred ministry can claim (see commentary on cc. 219 and 1026). Even though there exists a fundamental right of the faithful to freely follow their own vocation in the Church (c. 219), and even if they possesses the necessary requisites of study, age, etc., ultimate judgement on the suitability of the candidate and the definitive call to orders exclusively falls to the competent authority in the Church. Such authority may not allow someone who he judges to be without the necessary qualities to receive the sacrament. In virtue of the aforementioned fundamental right and of the "right of petition" which the faithful also enjoy (c. 212 § 2), what does exist, proportionate to the degree in which the required personal conditions are fulfilled, is a right to request the sacrament, the correlative duty to arrange just means to consider such a petition, and the duty not to hinder the following of one's own vocation. There is no right to be ordained since, "each and every time the ultimate decision on the organization and the regulation of the sacred ministry belongs to the hierarchy."[1]

1. J. HERVADA, *Elementos de Derecho Constitucional Canónico* (Pamplona 1987), p. 134.

However, he who as a candidate to the priesthood has already been ordained to the diaconate possesses, if not a strict right, at least a juridically founded claim for his priestly ordination. He is the one derived from having been considered suitable, to the point of having been conferred with the sacrament in the first of its grades and in this way assuming the condition of a cleric, with the expectation of a future priesthood. Before the diaconal ordination, the personal conditions determined for the diaconate would have to have been proven, those personal conditions are also required for the priesthood. Hence, once the judgment of suitability, dealt with in cc. 1025 § 2 and 1029, has been made, the competent Superior must not prevent access to the priestly order at his own discretion. In fact, he could only deny it "for a canonical reason, even one which is occult," as this canon establishes.[2]

2. A canonical reason is all that, according to the law, prevents ordination. It deals with typical causes, whether they are public or occult, in other words, expressly foreseen by the law. This is the case of censures (cc. 1331–1333), of other penalties for certain crimes (cc. 1391 or 1395, e.g.), of irregularities and impediments (cc. 1040–1042), and of the lack of fulfillment of the requisites to be ordained. These would be issues of due freedom (c. 1026), age limits (c. 1030), requisites of formation (cc. 1028 and 1032), requisites previous to the ordination (cc. 1033–1039), and prescribed documents (c. 1050, 1°–2°).

If the canonical obstacle can be overcome by the candidate himself, for example, by merely taking the due action to fulfill a previous requisite that he had neglected or by completing his formation, the priestly ordination should be rejected only until these canonical requisites are met.[3] If there is a just reason, the bishop or the ordinary may even dispense those requisites and impediments that they are permitted by the law to dispense (cc. 85–91, 1031 § 4, 1047). It should not be forgotten, however, that the concession of such a dispensation, as a grace, cannot, strictly speaking, be juridically demanded by the candidate. On the other hand, an obstacle of divine law, or one that suggests a truly grave reason for the proper bishop or the competent major Superior to rectify his judgment on the suitability of the candidate, it would constitute sufficient reason to be able to, and even to have to. deny the ordination.

3. When the competent Superior prohibits ordination, he must inform the interested party of the reason his access to the priesthood was denied, so that the latter has the opportunity to defend himself.[4] thief a

2. Cf. K. LÜDICKE, commentary on c. 1030, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), p. 1030/1; A. MOLINA, commentary on c. 1030, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 459.

3. Cf. K. LÜDICKE, commentary on c. 1030, cit., p. 1030/1.

4. Cf. *Comm.* 10 (1978), p. 188.

case arose in which the denial were unfounded, the candidate's pleas were not accepted by those responsible and the candidate felt that he had been harmed, the possibility of "recourse in accordance with the law" would be appropriate.[5]

If the competent authority denied the admission to priestly ordination by administrative channels, the claim must be made through those channels as well (cc. 1732–1739), and it will be addressed in the last instance to the corresponding organs of the Apostolic See: CC, in secular cases; CEC or CEP, in the respective territories; and CICLSAL, for those who depend on this Dicastery.[6] If, however, the prohibition of a subsequent ordination had been the result of a penal sentence, issued by a tribunal (e.g., in the application of c. 1395), the appeal should be addressed to the superior processural instance (cc. 1728 § 1, 1629–1640).[7]

5. A. MOLINA, commentary on c. 1030, cit., p. 459.
6. Cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 1030, in *Pamplona Com.*
7. Cf. K. LÜDICKE, commentary on c. 1030, cit., p. 1030/1.

1031 **§ 1. Presbyteratus ne conferatur nisi iis qui aetatis annum vigesimum quintum expleverint et sufficienti gaudeant maturitate, servato insuper intervallo sex saltem mensium inter diaconatum et presbyteratum; qui ad presbyteratum destinantur, ad diaconatus ordinem tantummodo post expletum aetatis annum vigesimum tertium admittantur.**

§ 2. Candidatus ad diaconatum permanentem qui non sit uxoratus ad eundem diaconatum ne admittatur, nisi post expletum vigesimum quintum saltem aetatis annum; qui matrimonio coniunctus est, nonnisi post expletum trigesimum quintum saltem aetatis annum, atque de uxoris consensu.

§ 3. Integrum est Episcoporum conferentiis normam statuere, qua provectior ad presbyteratum et ad diaconatum permanentem requiratur aetas.

§ 4. Dispensatio ultra annum super aetate requisita ad normam §§ 1 et 2, Apostolicae Sedi reservatur.

§ 1. The priesthood may be conferred only upon those who have completed their twenty-fifth year of age, and possess a sufficient maturity; moreover, an interval of at least six months between the diaconate and the priesthood must have been observed. Those who are destined for the priesthood are to be admitted to the order of diaconate only when they have completed their twenty-third year.

§ 2. A candidate for the permanent diaconate who is not married may be admitted to the diaconate only when he has completed at least his twenty-fifth year; if he is married, not until he has completed at least his thirty-fifth year, and then with the consent of his wife.

§ 3. Bishops' Conferences may issue a regulation which requires a later age for the priesthood and for the permanent diaconate.

§ 4. A dispensation of more than a year from the age required by §§ 1 and 2 is reserved to the Apostolic See.

SOURCES: § 1: c. 975; *OT* 12
§ 2: *OT* 12; *SDO* 5, 12
§ 3: *SDO* 5, 12; *RFIS* 43
§ 4: *PM* 15; *CAd* I, 6; *EM* IX, 6; CodCom Resp. II, 19 iul. 1970 (*AAS* 62 [1970] 571)

CROSS REFERENCES: cc. 85–93, 202–203, 378, 1025 § 1, 1029

COMMENTARY

Daniel Cenalmor

1. The fundamental object of age limits established in this canon is to prudently ensure that the candidates to the diaconate and to the priesthood possess sufficient human and spiritual maturity to be able to embrace their vocation with a fully responsible choice, *mature deliberata* (*OT* 12), as well as to later suitably fulfill their ministerial functions, in which they will act representing Christ as the Head (c. 1008).[1] In fact, the representation of Christ requires that the human perfection that shines in the Son of God made man also shines in the candidate, to the extent that this is possible. This is so he may be a better dispenser of the divine mysteries, so that he may facilitate people in finding God and so that his ministry may be as credible and acceptable as possible (*PDV* 43). And there is a legitimate presumption that such maturity is habitually acquired with the passage of the years and with the due human and spiritual formation, proper to the candidates in this ministry.[2] Although grace and personal harmony with the vocation are fundamental, they can, on occasion, largely compensate for that which is usually achieved with the course of time. A possibility, therefore, of a certain margin of dispensation exists when a particular pastoral urgency thus calls for it.

2. *CIC*/1917 (c. 975) maintained the age required by the Council of Trent for the ordination of deacons and of priests.[3] But *CIC*/1983 has added one year to this age in both cases. The age has therefore become twenty-three years for the non-permanent diaconate and twenty-five years for the priesthood (c. 1031 § 1). In all these cases, the calculation of time will be done according to cc. 202–203.

An interval of at least six months must pass between the ordination to the transitional diaconate and the priesthood, (three more than in *CIC*/1917) so that during that time the received order can be exercised. Many religious orders enjoy privileges to reduce this interval.[4] With just cause, in accordance with cc. 87 and 90, bishops can also shorten it, given that the corresponding dispensation is not reserved to the Apostolic See.

3. *SDO* reestablished the permanent diaconate and distinguished two types of candidates to this grade of the order, married and unmarried, in accordance with *Lumen gentium* 29. In this way, it established that the

1. Cf. K. LÜDICKE, commentary on c. 1031, in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), p. 1031/1.
2. Cf. A. MOLINA, commentary on c. 1031, in *Código de Derecho Canónico. Edición bilingüe, fuentes y comentarios de todos los cánones* (Valencia 1993), p. 459.
3. Cf. COUNCIL OF TRENT, *Sess. XXIII, Decr super reformatione*, c. 12.
4. Cf. J.M. GONZÁLEZ DEL VALLE, commentary on c. 1031, in *Pamplona Com.*

former could only be ordained once they had completed their thirty–fifth year and the latter only when they had completed their twenty–fifth year (*SDO* 5 and 12). Paragraph 2 of this canon maintains those same ages. Like *SDO* 11, it also requires that married candidates have the consent of their wives in order to receive the sacrament, doubtless because any opposition by the candidate's wife would make to a greater or lesser degree the ministry difficult to exercise.

For married deacons this prescription has not established, however, a minimum trial period of marriage. Therefore, it corresponds to the Conferences of Bishops to specify (or not) this period, within the corresponding norms of their formation (c. 236); CBS, e.g., requires "at least five years of conjugal life."[5] But in any case, this should be asked of those candidates who show sufficient proof of Christian maturity in their matrimonial and family life,[6] in accordance with what is established in *SDO* 13: "It must be taken care that the only married men who are promoted to the diaconate are those who, having lived a married life for several years, have shown that they govern their home well, by having a wife and children who lead truly Christian lives and enjoy good reputations (cf. 1 Tim 1, 10–12)."

4. Taking into account particular and cultural circumstances of different regions, the Conferences of bishops may require a later age for priesthood and the permanent diaconate, but not for the transitional diaconate (§ 3). Those ages—like the minimum time of married life that such conferences eventually require of the married candidates to the permanent diaconate, could, however, be dispensed by the proper bishop or by the proper Superior, with the consent of his council, and by the local Ordinaries when it is considered to be in the best interest of the faithful (c. 88). The diocesan bishops and their equivalent in law even have the power to dispense from a time that is less than a year than the ages established in §§ 1 and 2 of this canon. And as can be inferred from the Rescr. Pont. *Cum Admotae*, it appears that the major Superiors also enjoy a similar faculty with respect to their subjects, with the consent of their Council (*CAd* I, 6).

For more than a year's time, the dispensation from age is explicitly reserved to the Apostolic See (§ 4). But if the requisites foreseen in c. 87 § 2 are fulfilled, any ordinary could also dispense from more than a year. Although in the last case, it should also be taken into account that the CCDDS, competent for this subject (*PB*, art. 63), can add only a subsequent dispensation of 6 months (to the advance of one year for which the Bishop is competent) in the receipt of the presbyterate, of the transient and of the permanent diaconate of the celibate, and of 3 months for the permanent diaconate of the married one. And it should also be taken into account that the sameCDWDS, in view of the fact that more than a few

5. Cf. CBS, *Normas prácticas para la instauración del diaconado permanente en España*, no. 11.
6. Cf. K. LÜDICKE, commentary on c. 1031, cit., p. 1031/1.

causes of nullity of the ordination that, alleging some kind of psychological-emotional immaturity, were pursued after those advances, decided after July 24, 1997, with the approval of the Pope: *a)* not to grant said dispensations anymore except in "extremely rare exceptional cases" based exclusively on grave pastoral demands for the *salus animarum,* and *b)* grant them only for "extremely brief periods of time" and as valid and binding for a specified period of time "onerata conscientia Episcopi."[7]

7. Cf. *Notitiae* 33 (1997), pp. 281–283.

1032 **§ 1. Aspirantes ad presbyteratum promoveri possunt ad diaconatum solummodo post expletum quintum curriculi studiorum philosophico-theologicorum annum.**

§ 2. Post expletum studiorum curriculum, diaconus per tempus congruum, ab Episcopo vel a Superiore maiore competenti definiendum, in cura pastorali partem habeat, diaconalem exercens ordinem, antequam ad presbyteratum promoveatur.

§ 3. Aspirans ad diaconatum permanentem, ad hunc ordinem ne promoveatur nisi post expletum formationis tempus.

§ 1. Aspirants to the priesthood may be promoted to the diaconate only when they have completed the fifth year of the curriculum of philosophical and theological studies.

§ 2. After completing the curriculum of studies and before being promoted to the priesthood, deacons are to spend an appropriate time, to be determined by the Bishop or by the competent major Superior, taking part in the pastoral ministry and exercising the diaconal order.

§ 3. An aspirant to the permanent diaconate is not to be promoted to this order until he has completed the period of formation.

SOURCES: § 1: c. 976 § 2; *EM* IX, 7; *AP* VII, a
§ 2: *OT* 12; *RFIS* 42c, 63
§ 3: *SDO* 6, 8–10; *AP* VII, b

CROSS REFERENCES: cc. 236, 248–258, 1025 § 1, 1027, 1029

COMMENTARY

Daniel Cenalmor

1. In accordance with c. 250, the philosophy and theology studies carried out by the candidates to the priesthood in seminaries must last at least six years, "in such a way that the time given to philosophy studies amounts to two full years and that allotted to theological studies to four full years." If the students carry out those studies in a school of sacred theology, a "pastoral year" must be added to the institutional five-year period, (which does not necessarily need to be organized by the same school).[1] In

1. Cf. *SapChr*, art. 74; SCCE, *Normas*, April 29, 1979, arts. 51, 52 and 54.

this way, the complete formation of these seminary students will also comprise at least six years.

Aspirants to the priesthood can only be promoted to the diaconate "when they have completed the fifth year of the curriculum of philosophical and theological studies" (§ 1). Therefore, to receive the diaconal order, they must have completed at least the third year of the four-year period of theology in their seminary, or the equivalent course in the institutional five-year period if their philosophical and theological studies are carried out in an ecclesiastical school.

In order to be able to be promoted to the priesthood, the deacons who aspire to this order must have already finished all their philosophical and theological studies, in accordance with what is deduced from § 2. Furthermore, as this norm explicitly indicates, they must have taken part in pastoral ministry. And "before being promoted to the priesthood, deacons are to spend an appropriate time, to be determined by the bishop or by the competent major Superior, taking part in the pastoral ministry and exercising the diaconal order." That authority possesses a certain margin of discretion to shorten or to extend that period, on the basis of the usual interval of at least six months, as stated by c. 1031 § 1.

2. *De Episcoporum muneribus* IX, 7, reserved the dispensation from "rational philosophical and theological studies, relative to their duration and to that which concerns the primary disciplines" to the Roman Pontiff. However, *CIC* does not establish any reservation in this regard. From here it follows that, if there is just and reasonable cause, the diocesan bishop and those equivalent to him in law (c. 87 § 1), and even any ordinary (if the supposition in c. 87 § 2 occurs), can actually dispense from the time required for the philosophical and theological studies. None of the aforementioned can dispense from their proper studies, however, because it would then be difficult to invoke the just and reasonable cause that would be necessary for the validity of said dispensation (c. 90 § 1).[2]

The particular law, which is so important in this subject, cannot establish norms which are contrary to the universal law. Therefore, a particular law which established a period of philosophical and theological formation that wasless than that established in the *CIC*, would not be acceptable without express concession by the Apostolic See. But this does not hinder the possibility of the aforementioned dispensation if the matter is not especially reserved to the Holy See or to another authority. It is not improbable, in this way, for the period of studies for aspirants to the priesthood that are of a mature age and well formed to be reduced, without decreasing the rigor of the formation required for the exercise of the ministry.[3]

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2. Cf. T. RINCÓN-PÉREZ, "Disciplina canónica del culto divino," in *Manual de Derecho Canónico*, 2nd ed. (Pamplona 1991), p. 566.

3. Aspirants to the permanent diaconate should not be promoted to this order before they have completed the time established for their formation, whose regulation corresponds to the Conferences of Bishops (c. 236). The *CIC* specifies in detail that young candidates to that order are to remain "for at least three years in a special house, unless the diocesan bishop for grave reasons decides otherwise" (c. 236, 1°), and that "men of more mature years, whether celibate or married," are to spend "three years in a manner determined by the same Conference of Bishops" (c. 236, 2°).[4]

3. Cf. ibid.

4. Cf. also, for this subject, CCE, *Ratio fundamentalis diaconorum permanentium*, February 22, 1998.

ART. 2
De praerequisitis ad ordinationem

ART. 2
Prerequisites for Ordination

1033 **Licite ad ordines promovetur tantum qui recepit sacrae confirmationis sacramentum.**

Only one who has received the sacrament of sacred confirmation may lawfully be promoted to orders.

SOURCES: cc. 974 § 1,1°, 993,1°; *LG* 11

CROSS REFERENCES: cc. 17, 890, 891, 1008, 1009

COMMENTARY

Fernando Loza

A prerequisite for the liciety of ordination is that the candidate has received the sacrament of Confirmation.

This is required because Confirmation is one of the sacraments of *Christian initiation* and it constitutes the baptized in the fullness of the common priesthood, granting him the ontological maturity of his basic sacramental conformity with Christ (cf. *LG* 11). It is therefore logical and suitable that the candidate be confirmed before receiving the Holy Orders.

The precedents of this norm are the following: the prescription of the Council of Trent (*Sess.* XXIII, c. 4, *de reform.*) and *CIC*/1917 (c. 974), which required prior Confirmation for licit reception of *tonsure*. Now that this has been suppressed, it may be asked if the requirement of this norm also affects reception of the ministries of lector and acolyte, and admission of a candidate to the diaconate. This canon does not explicitly state anything. Some authors are inclined to extend this prerequisite to the

conferral of ministries and to the diaconal candidacy, due to the suitability,[1] or in compliance with, c. 890.[2]

Our opinion is that, regarding the matter of canonical liciety, this norm must be interpreted by the "proper meaning of the words," in accordance with c. 17. This canon on which we are commenting refers to the licit reception of the order. But the order, in the strict sense, according to cc. 1008–1009, is diaconate, priesthood and episcopate. Therefore we conclude that, in virtue of this norm, the prerequisite of Confirmation is only required for the sacramental reception of orders properly speaking

1. L. CHIAPPETTA, *Il Codice di Diritto Canonico* (Naples 1988), p. 148, no. 3467.
2. J.M. GONZÁLEZ DEL VALLE, commentary on c. 1033, in *Pamplona Com.*

1034 **§ 1. Ad diaconatum vel presbyteratum aspirans ne ordinetur, nisi prius per liturgicum admissionis ritum ab auctoritate, de qua in cann. 1016 et 1019, adscriptionem inter candidatos obtinuerit post praeviam suam petitionem propria manu exaratam et subscriptam, atque ab eadem auctoritate in scriptis acceptatam.**

§ 2. Ad eandem admissionem obtinendam non tenetur, qui per vota in clericale institutum cooptatus est.

§ 1. An aspirant to the diaconate or to the priesthood is not to be ordained unless he has first, through the liturgical rite of admission, secured enrolment as a candidate from the authority mentioned in cann. 1016 and 1019. He must previously have submitted a petition in his own hand and signed by him, which has been accepted in writing by the same authority.

§ 2. One who has by vows become a member of a clerical institute is not obliged to obtain this admission.

SOURCES: § 1: *AP* I, a; PONTIFICALE ROMANUM, *Admissione inter candidatos ad Diaconatum et Presbyteratum*, [1972], III, 1
§ 2: *AP* I, a; PONTIFICALE ROMANUM, *Admissione inter candidatos ad Diaconatum et Presbyteratum*, [1972], III, 1

CROSS REFERENCES: cc. 1016, 1019, 588 § 2

COMMENTARY

Fernando Loza

1. This canon establishes another prerequisite to receive the diaconate and priesthood: the "liturgical rite" of admission. This rite was introduced by Paul VI in the mp *Ad pascendum*[1] and by a Decree of *SCDW*, of December 3, 1972.[2] It was incorporated in the Roman Pontifical.

The canon specifies the *way* to present the petition for admission: "a petition in his own hand and signed by him." The requirement that the author handwrite it indicates the importance of this petition, as a guarantee of the freedom of conscience and free petition for the sacred order. Acceptance of the petition by the competent authority must also be

1. July 15, 1972, *AAS* 64 (1972), pp. 534–540.
2. *AAS* 65 (1973), pp. 274–275.

"written," although the norm no longer requires it to be handwritten, but it does, require it to be signed by the authority.

The norm refers to cc. 1016 and 1019 (see respective commentaries) to identify the competent authority. It is sufficient to indicate that it is either the bishop or the major Superior, in accordance with the referred canons.

2. The canon expressly distinguishes between aspirant and candidate. The aspirant is one who presents a petition for Holy Orders; the candidate is only he who has officially been accepted as such by the liturgical rite of admission.

3. According to what is established in § 2, the previous incorporation "by vows to a clerical institute" excuses this obligatory previous rite. It is evident that the admission to such vows and the incorporation into the institute by means of their issuance is equal to and replaces, according to the mind of the legislator, the liturgical rite of admission.

1035 **§ 1. Antequam quis ad diaconatum sive permanentem sive transeuntem promoveatur, requiritur ut ministeria lectoris et acolythi receperit et per congruum tempus exercuerit.**

§ 2. Inter acolythatus et diaconatus collationem intervallum intercedat sex saltem mensium.

§ 1. Before anyone may be promoted to the diaconate, whether permanent or transitory, he must have received the ministries of lector and acolyte, and have exercised them for an appropriate time.

§ 2. Between the conferring of the ministry of acolyte and the diaconate there is to be an interval of at least six months.

SOURCES: § 1: *AP* II; *MQ* XI
§ 2: c. 978; *AP* IV

CROSS REFERENCES: cc. 87, 230 § 1

COMMENTARY

Fernando Loza

1. The reform made by Paul VI with the mp *Ministeria quaedam*, of August 15, 1972,[1] suppressed the tonsure and reduced the old orders of porter, lector, exorcist, acolyte and subdeacon to two (lector and acolyte). The current orders in force of lector and acolyte are lay ministries (c. 230 § 1).Their reception does not entail entry to the clerical state, which arises from the reception of the diaconate (c. 266 § 1).

2. The canon establishes the reception and exercise of these ministries during an "appropriate time," as a prerequisite for the diaconate. In reference to the conferral of acolyte, the canon specifies a minimal interval of six months, before receiving the diaconate (§ 2).

There are two reasons and purposes for this interval of time: *a)* to offer the future deacon the opportunity to gradually acquire greater reflection on his decision and for his responsibility to mature, *b)* to facilitate the bishop or the Superior's discernment regarding the suitability of the aspirant to the diaconate, (transitory or permanent), and also to give the Christian community the opportunity to better know its future ministers, so

1. *AAS* 64 (1972), pp. 529–534.

that, given such a case, the faithful may testify in favor or against the future ordination.

It is for everyone, therefore, a precautionary requisite, in order to prudently guarantee the suitability of receiving and conferring the diaconate or not.

3. The possible dispensation from the requirement of this norm (previous reception, exercise of such ministries, interval) is the competency of the diocesan bishop,[2] in exercising his ordinary executive power, in accordance with c. 87 § 1.

2. Cf. *Comm.* 15 (1983), p. 218, c. 988 § 1.

1036 Candidatus, ut ad ordinem diaconatus aut presbyteratus promoveri possit, Episcopo proprio aut Superiori maiori competenti declarationem tradat propria manu exaratam et subscriptam, qua testificetur se sponte ac libere sacrum ordinem suscepturum atque se ministerio ecclesiastico perpetuo mancipaturum esse, insimul petens ut ad ordinem recipiendum admittatur.

For a candidate to be promoted to the order of diaconate or priesthood, he must submit to the proper Bishop or to the competent major Superior a declaration written in his own hand and signed by him, in which he attests that he is about to receive the sacred order freely and of his own accord and will devote himself permanently to the ecclesiastical ministry, asking at the same time that he be admitted to receive the order.

SOURCES: c. 992; SCDS Instr. *Quam ingens*, 27 dec. 1930 § 3, 1 (*AAS* 23 [1931] 125); SCRit Instr. *Quantum religionis*, 1 dec. 1931, 17 (*AAS* 24 [1932] 80–81); SCRit Instr. *Religiosorum institutio*, 2 feb. 1961; *AP* V

CROSS REFERENCES: c. 1026

COMMENTARY

Fernando Loza

1. In order to be able to receive the diaconate (permanent or transitory) or priesthood, the candidate must present a declaration to the proper bishop or to the major Superior. The canon specifies the manner and the content of this declaration. *a*) the norm specifically requires that it be handwritten by the author, "written in his own hand and signed by him"; *b*) it must contain his desire and the petition to receive the corresponding sacred order. It must explicitly state the proper initiative and freedom of the candidate in the petition and proposal, as well as his explicit will to be perpetually dedicated to the ministry that will be conferred on him. Such declaration in the author's hand must be made for the diaconate and also for the priesthood.[1] The conjunction aut in the present

1. This practice had already been established by the Instrs. of the SCDS *Quam ingens*, December 27, 1930, in *AAS* 23 (1931), pp. 120–127, and *Quantum religionis*, December 1, 1931, in *AAS* 24 (1932), pp. 74–81.

canon ("ad ordinem diaconatus *aut* presbiteratus") does not have a disjunctive value but a *copulative* one.[2]

2. Canon 1026 deals with the "required freedom" of the candidate (see commentary). The present canon tries to guarantee the author's proof of the free initiative, free and true will of the candidate to receive the sacred order. This declaration constitutes a precautionary guarantee for the Church before proceeding with the ordination, and even after, for example, in the unforeseen future process of the nullity of the ordination (cf. cc. 1708 and 125–126). This declaration, written by the ordinandi, can also be a clear argument of his right dispositions and of his freedom, in case of possible future ministerial doubts or crises.

3. The norm requires, furthermore, that the candidate manifest his unequivocal intention and will to assume the sacred ministry in perpetuity. This is undoubtedly required of him in order to eliminate any erroneous concept and purpose of an *ad tempus* ministry.

2. Cf. L. CHIAPPETTA, *Il Codice di Diritto Canonico* (Naples 1988), p. 150, note 2.

1037 Promovendus ad diaconatum permanentem qui non sit uxoratus, itemque promovendus ad presbyteratum, ad ordinem diaconatus ne admittantur, nisi ritu praescripto publice coram Deo et Ecclesia obligationem caelibatus assumpserint, aut vota perpetua in instituto religioso emiserint.

A candidate for the permanent diaconate who is not married, and likewise a candidate for the priesthood, is not to be admitted to the order of diaconate unless he has, in the prescribed rite, publicly before God and the Church undertaken the obligation of celibacy, or unless he has taken perpetual vows in a religious institute.

SOURCES: DE/1967 16; *AP* VI; PONTIFICALE ROMANUM, *De sacro caelibatu amplectendo*, 3 dec. 1972, 1

CROSS REFERENCES: cc. 277, 573, 654, 1087, 1191, 1192

COMMENTARY

Fernando Loza

1. The mp *Ad pascendum*, of Paul VI,[1] introduced the rite by which candidates to the diaconate, (permanent or transitory)—which carries celibacy with it, had to previously make a promise of undertaking such an obligation. This rite was included in the Roman Pontifical, and is now codified.

The norm prescribes that such candidates, before receiving the diaconate, are to celebrate a ceremony in which they publicly manifest their firm decision and purpose "before God and the Church undertake the obligation of celibacy." Such a ceremony must be celebrated before ordination and be clearly separated from the sacramental rite.

This ceremony is purely a *declaration* of the candidate's intention; he will actively assume the commitment to celibacy in the sacramental reception of the diaconate. For this reason, even if this previous rite were not carried out, the obligation of celibacy is contracted by the ordination itself (cf. c. 277 § 1). And if, for any reason, the sacramental order is not received, the obligation of celibacy does not arise, even if the candidate had already carried out the previous ceremony, as prescribed by the canon.

1. July 15, 1972, *AAS* 64 (1972), pp. 534–540.

2. The norm's requirement affects: *a*) celibate candidates to the permanent diaconate, and *b*) candidates to the transitory diaconate (who are candidates to the priesthood). Therefore it does not affect candidates to the permanent diaconate who are already married, who cannot celebrate this previous rite, and cannot assume the obligation of celibacy. If, however, one were to become a widower, that person would be automatically subject to celibacy and incur the impediment of Holy Orders to contract a new marriage, pursuant to c. 1087 (see commentary).

3. The *in fine* of the canon exempted those candidates who have "taken perpetual vows in a religious institute" from such requisite ceremony (cf. cc. 573, 654, 1191–1192). This exception of the Code was derogated in a special mandate by the Supreme Pontiff John Paul II.[2] In virtue of such derogation, those candidates are to carry out the rite prescribed by the norm, by which they show their firm decision to undertake the obligation of celibacy "in ipsa Ordinatione diaconorum, … tamquam peculiare propositum Ordinationi de iure coniunctum."

It seems clear that the reason for the derogation is the explicit will of the legislator to emphasize and strengthen the undertaking of the permanent celibacy as a peculiar and specific obligation linked to Holy Orders, regardless of the fact that such candidates had already undertaken it in virtue of the perpetual religious vows. These commitments have different origins.

4. It seems appropriate to illustrate the content of this canon with some words of John Paul II who, transcending the mere disciplinary norms, situates the value of priestly celibacy in its deepest dimension of faithfulness to a commitment contracted personally before God as an answer to a divine gift. "The opinion that is often divulged, according to which priestly celibacy in the Catholic Church is simply an institution imposed by law on all those who receive the sacrament of Orders, is the fruit of an ambiguity—to avoid speaking in bad faith. We all know that this is not true. Every Christian who receives the sacrament of Orders accepts celibacy with full conscience and freedom, after years of preparation, of deep reflection and of assiduous prayer. He makes the decision to live lifelong celibacy only after having been convinced that Christ granted him this gift for the good of the Church and for the service to others. Only then does he commit himself to observe it during his entire life. It is natural that such a

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2. "De speciali autem mandato Summi Pontificis Ioannis Pauli II, disciplina mutata est ita ut etiam electi, qui in Instituto religioso vota perpetua emiserunt, posthac teneantur in ipsa Ordinatione diaconorum, derogato prescripto canonis 1037 Codicis Iuris Canonici, sacrum caelibatum amplecti tamquam peculiare propositum Ordinationi de iure coniunctum." CDWDS, Decree, June 29, 1989, no. 5, in *Pontificale Romanum. De Ordinatione Episcopi, Presbyterorum et Diaconorum* (Typis polyglottis Vaticanis 1990), p. IV.

decision binds not only by virtue of the 'law' established by the Church, but also in view of personal responsibility. This is a matter of *keeping one's word which was given to Christ and to the Church.* Faithfulness to one's word is both a duty and proof of the interior maturity of the Priest, as well as an expression of his personal dignity."[3]

3. JOHN PAUL II, Letter *Novo incipiente*, April 8, 1979, in *AAS* 71 (1979), pp. 393–417, no. 9.

1038 Diaconus, qui ad presbyteratum promoveri renuat, ab ordinis recepti exercitio prohiberi non potest, nisi impedimentum detineatur canonico aliave gravi causa, de iudicio Episcopi dioecesani aut Superioris maioris competentis aestimanda.

A deacon who refuses to be promoted to the priesthood may not be forbidden the exercise of the order he has received, unless he is constrained by a canonical impediment, or unless there is some other grave reason, to be estimated by the diocesan Bishop or the competent major Superior.

SOURCES: c. 973 § 2

CROSS REFERENCES: cc. 17–18, 1026, 1353, 1400 § 2, 1732

COMMENTARY

Fernando Loza

1. This canon considers a particular case, "A deacon who refuses to be promoted to priesthood." It is a matter of a transitory deacon who, for personal reasons (e.g., spiritual, psychological, family), neither wishes to be ordained to the priesthood, nor does he wish to lose the clerical state by pontifical dispensation from celibacy (cc. 290–292). Such a deacon wishes to continue to exercise his diaconal ministry.

It is certainly a rare case, but it can occur.

2. Since "it is absolutely wrong to compel anyone, in any way or for any reason whatsoever, to receive orders" (c. 1026), the legislator adopts an extremely prudent canonical solution to address this specific case: *a*) the will of the deacon is fully respected, without entering in the sacred sphere of his conscience, nor investigating in any way the intimate motivation of his refusal; *b*) his rights are guarded, restrictively stating that such a deacon "may not be forbidden the exercise of the order he has received," only because he does not wish to receive the priesthood. He can only be forbidden from exercising it for other reasons, which the norm circumscribes to "canonical impediment, or unless there is some other grave cause."

3. Verification of the hypothesis that the canon contemplates poses a question regarding the canonical situation of such a deacon: *de facto*, he remains a celibate permanent deacon; *de iure*, he continues to be a transitory deacon, because he was admitted and ordained as such. It would

therefore be legitimate for him to exercise the diaconal ministry, with all its duties and rights.

One author[1] considers grave cause to be, for such a prohibition, the mere circumstantial fact that such a deacon is incardinated in a diocese or institution in which the permanent diaconate is not established. Therefore this opinion does not seem acceptable because such prohibition would limit the free exercise of the deacon's rights, and this canon is to be interpreted in light of c. 18: "Laws which ... restrict the free exercise of rights ... are to be interpreted strictly." This present norm says nothing about the hypothesis that is alluded to, nor does it seem that this is not the mind of the legislator (c. 17).

Against an eventual prohibition, considered to be illegitimate by the deacon, he may have recourse "in devolutivo" to the corresponding Roman Congregation, in accordance with cc. 1353, 1400 § 2 and 1732.

The possibility cannot be excluded that later the causes or reasons that originated the deacon's refusal to receive the priesthood may disappear, and that he may then petition to be promoted to that order.

1. J.M. GONZÁLEZ DEL VALLE, commentary on c. 1038, in *Pamplona Com.*

1039 **Omnes qui ad aliquem ordinem promovendi sunt, exercitiis spiritualibus vacent per quinque saltem dies, loco et modo ab Ordinario determinatis; Episcopus, antequam ad ordinationem procedat, certior factus sit oportet candidatos rite iisdem exercitiis vacasse.**

All who are to be promoted to any order must make a retreat for at least five days, in a place and in the manner determined by the Ordinary. Before he proceeds to the ordination, the Bishop must have assured himself that the candidates have duly made the retreat.

SOURCES: c. 1001 §§ 1 et 4

CROSS REFERENCES: cc. 202 § 1, 1009

COMMENTARY

Fernando Loza

1. The current Code, as well as *CIC*/1917, changes a spiritual ascetic practice, secularly lived in the Church, previous to orders, into a normative requisite: a spiritual retreat.[1] It is comprised of five days of retreat, external recollection and internal silence, fully dedicated to prayer. This is, doubtless, the best immediate preparation to receive the sacrament of Orders: an opportunity and means for the candidate to verify the rightness of his intention; to mature and strengthen his decision to generously give himself to the ministry.

2. This norm prescribes that such a spiritual retreat: *a*) must be carried out by all candidates before receiving any of the three orders (cf. c. 1009); *b*) must have a minimum duration of five days (the place and way are left to the prudence of the proper bishop); *c*) the ordaining bishop must have proof, before he proceeds with the ordination, that this requirement has been fulfilled.

Considering the context, the purpose and the circumstances of the norm, it seems to be in accordance with the mind of the legislator (cf. c. 17), for this preparatory retreat to be close in time to the ordination.

1. Regulations on this practice appear in several canons , e.g.: cc. 246 § 5, 276 § 2,4°, 663 § 5, 719 § 1.

3. Canon 1001 § 2 *CIC*/1917 established that "if the ordination is delayed more than six months after the spiritual exercises, they are to be repeated." The current Code does not explicitly contemplate this directive. We believe that the phrase "in the manner determined by the ordinary" includes, pursuant to the norm, that he will determine when the retreats are to be made and whether or not the candidates would have to repeat them. The indications of the cited canon of *CIC*/1917 may serve as a useful reference.

ART. 3
De irregularitabus aliisque impedimentis

ART. 3
Irregularities and Other Impediments

1040 **A recipiendis ordinibus arcentur qui quovis impedimento afficiuntur sive perpetuo, quod venit nomine irregularitatis, sive simplici; nullum autem impedimentum contrahitur, quod in canonibus qui sequuntur non contineatur.**

Those bound by an impediment are to be barred from the reception of orders. An impediment may be simple; or it may be perpetual, in which case it is called an irregularity. No impediment is contracted which is not contained in the following canons.

SOURCES: cc. 968, 983

CROSS REFERENCES: c. 18

COMMENTARY

José María González del Valle

1. Canon 1040 and the title "De irregularitatibus aliisque impedimentis" make it clear that in the terminology of the Code, irregularities constitute a type of impediment characterized by perpetuity, unlike simple impediments, lacking that characteristic. The expression *simple impediment* is suitable to designate a non-perpetual impediment. The word *impediments* designates simple impediments as well as irregularities. However, occasionally, something different may be deduced from the context. That may occur when "irregularities and impediments" or "irregularities and other impediments" are spoken of. In such cases, by "impediments" one must understand those which are not perpetual.

2. Impediments to the reception of the sacrament of orders date from the New Testament (cf. 1 Tm 3:2–12; Ti 1:6–7), but their juridical designation and the terminology that results from it are much more recent. Specifically, the use of the word "*irregularities,*" which previously had a very general scope, for perpetual impediments comes from Gasparri, who, in

addition to adopting this criterion as an author of canon law, legally canonized it in c. 983 of *CIC*/1917. The code of 1983 followed the same model. The *CCEO*, however, does not accept that terminology.

3. In the definitions previous to the current Code, the fact that impediments constitute a prohibition of ecclesiastical law was frequently emphasized. Therefore, impediments include other personal conditions that also impede the reception of orders (female sex, defect of age, nonbaptism), and that are of divine law as well as of human law. And thus, the absence of the requirements contained in cc. 1033–1039 cannot be considered to be impediments. In this respect c. 1040 is restrictive: "No impediment is contracted which is not contained in the following canons." Defect of age or not being confirmed, which before the codification of 1917 were considered to be impediments, are no longer considered as such. This is not an obstacle for confirmation and sufficient age continuing to be requisites for the licit reception of ordination. However, such cases do not fall under peculiar laws—of dispensation, of interpretation, of juridical effects—proper to the impediments.

The irregularity which c. 1041, 1° considers, as well as the simple impediment of c. 1044 § 2, 2° refer to a case (insanity or other psychological infirmity due to which he is judged incapable of rightly carrying out the ministry), which is directly derived from divine Law. In reality, all impediments are based, more or less remotely, on divine Law. When it is indicated that the impediments are an ecclesiastical institution, it should be emphasized that their configuration as such impediments depends on the discretion of the legislator. A specific prohibition to receive orders may be urged by the legislator by means of its classification as an impediment, with its particular juridical regulation, or by means of another juridical technique.[1]

4. In accordance with c. 18, impediments must be interpreted strictly. Their numeration constitutes a *numerus clauses*, (in the previous code, this criterion was only applied to the irregularities), and it is not fitting to value the existence of impediments by analogy.

5. The distinction between irregularities of defect and irregularities of delict, already present in classic law (X V, 34, 14), led the legislator of 1917 to group the *irregularities of defect* in c. 984 and the irregularities of delict in c. 985. The concept of irregularities by defect has disappeared from the new law. In its place, one is to distinguish between irregularities that come from a delict and those that do not.

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1. Recently, the CDF, in the Circular Letter through which the new discipline concerning the matter of the Eucharist was communicated (cf. 924), included the following norm: "d) Given the centrality of the eucharistic celebration in priestly life, candidates for the priesthood who are affected by celiac disease or suffer from alcoholism or related illnesses cannot be admitted into Holy Orders." Cf. CDF Circular Letter to the Presidents of the Conferences of Bishops, June 19, 1995, Prot. N. 89/78.

The following are irregularities of delict: those contained in c. 1041, 2°, in c. 1044 § 1, 2° and 3°, and the irregularity to exercise orders, (as a consequence of having received them while being affected by c. 1041, 2°), which is contained in c. 1044 § 1, 1°. The rest are not irregularities of delict, although eventually the facts on which they are based may possibly constitute a delict; in other words, in the rest of the cases it is irrelevant whether the supposition is or is not a delict.

From the session of *coetus* of March 13–18, 1978,[2] it can be inferred that the use of the word *delictum* in § 1, 3° of c. 1044 is intended and has precise juridical relevance. The same cases are contemplated in nos. 3°–6° of c. 1041, but only to the extent that they constitute a delict.

It seems suitable not to introduce the element of a delict into the configuration of the suppositions in nos. 3°–6° of c. 1041, because some of the behaviors mentioned no longer constitute a delict in the Code. Furthermore, the non–baptized who have procured an abortion, have committed homicide or have carried out any of the activities described there would be excluded from the corresponding irregularity, as was the case in the old c. 986 *CIC*/1917 and with the current 762 § 2 *CCEO*. The following would also be excluded from irregularity: those who conduct themselves in this way after having been baptized, are not subject to ecclesiastical penal law or who for any reason are not affected by it. They may be, for example, a baptized non-catholic in accordance with c. 11 or a minor under sixteen years of age, in accordance with c. 1323. It is not suitable to require one who is not Catholic or one who has not even been baptized, (for this c. 1042, 3° exists), to have maintained integral faith during his entire life, but only that after his conversion he has not committed the delicts of heresy, apostasy, or schism. On the other hand, it seems reasonable to require that he had never procured an abortion, committed murder or carried out other behaviors that, in accordance with natural Law, are recognizable as evils.

It seems reasonable, however, to restrict the cases to those of delicts when it is a matter of irregularities which occur after ordination and they affect the exercise of orders already received, and even in this way, as in the case referred to in c. 1044 § 1, 2°, the delict must be public. In fact, to impede the exercise of an order which one has legitimately received, a more serious cause is needed than that needed to impede the exercise of the order of one whose ordination was illegitimate as a consequence of having been ordained while affected by an impediment.

The criterion used by the legislator of 1983 seems more correct to us than that of 1917, because it appropriately separates penal Law from the legislation pertaining to irregularities to the reception of orders. Even though the same behavior gives rise to a delict and an impediment, delict

2. Cf. *Comm.* 10 (1978) p. 201.

and impediment are two different juridical realities with different juridical governance. And in this way, even if an offender has complied with or has been absolved of the penalty, the impediment that comes from an delict persists. In the same way, the offense of abduction and the impediment of abduction are different juridical realities, each one with an independent juridical life.

6. The commentators of the previous discipline in the past indicated that the irregularities and other impediments had the effect not only of impeding the reception of orders, but also the effect of impeding the exercise of the received order. Even though the current Code introduces the distinction between being "impeded from receiving orders" (cc. 1041–1042) and being "irregular for the exercise of orders already received" (c. 1044), all the suppositions of cc. 1041 and 1042 do not only impede reception of orders, but also exercising received orders, in accordance with § 1, 1° and § 2, 1° of c. 1044. The rest of what is articulated in c. 1044 is constituted by impediments contracted after ordination that, in the case of irregularities, are to constitute cases of a delict.

7. The commentators of the old discipline also indicated that, regarding impediments and irregularities, the corresponding cases affect the liciety but not the validity of the ordination. Lüdicke[3] maintains that the cases contemplated in c. 1041, 1° originates the invalidity of the reception of the sacrament of orders. As we understand it, this is not true. In such a case, it would have been mandated to proceed in accordance with cc. 1708-1712, so that the *CDWDS* (cf. *PB* 68) would decide in accordance with the law. Yet from c. 1044 § 1, 1° it can only be inferred that he who suffers from any form of insanity or from any psychological infirmity, due to which he is judged incapable of properly fulfilling the ministry, is irregular to exercise the received orders, if he was ordained under such conditions.

Lüdicke, who has written at length about insanity and about the incapacity to assume conjugal obligations, seems to have transferred the invalidating effect of that matrimonial chapter to the sacrament of orders. He did it wrongly, however, because orders, different from matrimony, lack a contractual character. From the incapacity to fulfill obligations (*ad impossibilia nemo tenetur*) nullity of ordination cannot be analogously inferred. Canonical tradition, centered in this regard on the issues of c. 214 *CIC*/1917, has always considered the valid reception of the sacrament of orders and the acceptance of clerical obligations to be different things. On the other hand, the intention to receive the sacrament, necessary *ad validitatem* for those who have reached the use of reason, is compatible with the candidate having suffered from insanity at the moment of ordination.

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3. K. LÜDICKE, *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), see commentaries on cc. 1040, 1041.

1041 Ad recipiendos ordines sunt irregulares:

1° qui aliqua forma laborat amentiae aliusve psychicae infirmitatis, qua, consultis peritis, inhabilis iudicatur ad ministerium rite implendum;

2° qui delictum apostasiae, haeresis aut schismatis commiserit;

3° qui matrimonium etiam civile tantum attentaverit, vel ipsemet vinculo matrimoniali aut ordine sacro aut voto publico perpetuo castitatis a matrimonio ineundo impeditus, vel cum muliere matrimonio valido coniuncta aut eodem voto adstricta;

4° qui voluntarium homicidium perpetraverit aut abortum procuraverit, effectu secuto, omnesque positive cooperantes;

5° qui seipsum vel alium graviter et dolose mutilaverit vel sibi vitam adimere tentaverit;

6° qui actum ordinis posuerit constitutis in ordine episcopatus vel presbyteratus reservatum, vel eodem carens, vel ab eius exercitio poena aliqua canonica declarata vel irrogata prohibitus.

The following persons are irregular for the reception of orders:

1° one who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged incapable of properly fulfilling the ministry;

2° one who has committed the offence of apostasy, heresy or schism;

3° one who has attempted marriage, even a civil marriage, either while himself prevented from entering marriage whether by an existing marriage bond or by a sacred order or by a public and perpetual vow of chastity, or with a woman who is validly married or is obliged by the same vow;

4° one who has committed wilful homicide, or one who has actually procured an abortion, and all who have positively cooperated;

5° one who has gravely and maliciously mutilated himself or another, or who has attempted suicide;

6° one who has carried out an act of order which is reserved to those in the order of the episcopate or priesthood, while himself either not possessing that order or being barred from its exercise by some canonical penalty, declared or imposed.

SOURCES: 1°: c. 984,3°
2°: c. 985,1°
3°: c. 985,3°
4°: c. 985,4°
5°: c. 985,5°
6°: c. 985,7°

CROSS REFERENCES: cc. 1364, 1398

COMMENTARY

José María González del Valle

(See, for the concept of "irregularity," the commentary on c. 1040)

1°) Unlike *CIC*/1917 (cf. c. 984, 3°), this canon only speaks of one who *suffers from* insanity or any other psychological infirmity, not one who suffered from one of these in the past. Moreover, the way to prove that someone was affected by this irregularity at the time of ordination would be to prove that the insanity was present prior to the ordination (presuming its continuity) since proving its concomitance would be almost impossible.

When the presumption ceases, the irregularity also ceases, because more than an irregularity, characterized by its perpetuity, it is an impediment. Now, if someone receives the order even though he is affected by this irregularity, in accordance with c. 1044 § 1,1° he is irregular to exercise the received order. The situation in c. 1044 § 2, 2°, which is considered to be a simple impediment and not an irregularity, refers to the situation in which someone, after ordination, falls into insanity or a psychological infirmity due to which he is judged incapable of properly fulfilling the ministry. But not even in the situation in which someone received orders while suffering from insanity or a psychological infirmity is it suitable to value the existence of a perpetual impediment, due to the very structure of this premise.

The case studied here covers different matters than the psychological qualities that are congruent with the order to be received, spoken of in c. 1029. In c. 1029, the evaluation is left to the discretion of the bishop or competent Superior. In c. 1041, 1° judgement is also left to the competent Superior, after consulting experts. The report of at least two experts is required; and the competent Superior is the one to decide.[1] The canon uses the expression *iudicatur inhabilis*, from which it is inferred that the

1. Cf. *Comm.* 10 (1978), p. 197.

prescribed competent Superior issues a declarative judgement, not as an act of grace that admits or rejects the candidate.

The old Code already considered insanity as an irregularity. The current one introduces the concept of *psychological infirmity* as a different case, which, in Gilbert's judgement,[2] must be referred to the category of *personality disorders*, present in the canonical literature in reference to the matrimonial processes of nullity. In the same way that a judge cannot arbitrarily evaluate or not evaluate the psychological infirmities or insanities that are the basis of a declaration of nullity of a marriage, the competent Superior must also strive to abide by the truth while evaluating the suppositions of the present canon. It is a matter of a premise that does not admit dispensation.

The origin of the irregularity is the psychological infirmity and not the true or false judgement regarding its existence. Therefore, he who receives orders due to a mistaken favorable judgement is affected by the impediment. And conversely, he who has mistakenly received an adverse judgement does not incur in the impediment. A separate issue is whether, in the external forum, the first case is considered to lack the impediment and the second case is considered to be affected by one.

The legislator assumes that those psychological infirmities can cease, as is deduced from c. 1044 § 2, 2° (see commentary). In accordance with this the ordinary may allow someone who suffers from insanity or from another psychological infirmity to exercise the order, after consulting with an expert. The reason for consulting experts is to find out if we are or are not facing the presumption of insanity or of another psychological infirmity. This is because, in order to allow the exercise of the order in spite of the existence of the presumption, there must not be a need to accept what the expert says (cf. c. 1574).

Thus, if it is assumed that the presumption can cease, it does not seem unsuitable that he who was ordained while affected by the presumption can also be authorized by the ordinary to exercise the received orders (see commentary on c. 1047). And in such a case, instead of speaking of dispensation, one must speak of proof that the presumption has disappeared. Thus the action of the ordinary is of that admitting proof and not of dispensation, and it follows that we find ourselves dealing not with a perpetual impediment from which one is dispensed but with an impediment that ceases.

Gilbert[3] indicates that it is relatively frequent that people who were married and whose marriage was declared null by an ecclesiastical court later wish to become priests. In such a case, it is necessary to seek out in-

2. E.J. GILBERT, *The Code of Canon Law. A Text and Commentary* (New York 1991), see commentary on c. 1041, p. 729, note 94.
3. E.J. GILBERT, *The Code...*, cit., see c. 1041, p. 730.

formation from the courts regarding the grounds of nullity, given that in some cases the declaration of nullity is based on insanity or another psychological defect, which may disqualify the candidate for priesthood.

2°) Canon 1364 deals with the delicts of apostasy, heresy and schism, which are defined in c. 751. Many authors, previous to and following *CIC*/1917 understood that in order to assess the existence of an irregularity, it is necessary to adhere to a non-catholic sect. The current regulation, which distinguishes between irregularity to receive orders and irregularity to exercise the received orders, which does not occur if it is occult (cf. c. 1044 § 1, 2°), seems to make it understood that it is not necessary to adhere to a non-Catholic or atheist sect in order to assess the presumption of an irregularity.

Even though the irregularity is typified as it was in the old code, the usual interpretations that correspond to the former Code are not always applicable to the new norm. This is a consequence of the fact that the current c. 11 does not indicate that the merely ecclesiastical Laws bind non-Catholics, unlike the old c. 12.

Based on a decision made by the Holy Office of November 28, 1668,[4] repeated on other occasions,[5] the predominant opinion, when commenting on irregularity in the old code, maintained that as a means of precaution, dispensation can also be requested for those who were born into apostasy, heresy and schism. Canon 2200 § 2 (which corresponds to the current c. 1321 § 3) said that, when the law had been externally broken, there was a presumption of dolus in the external forum, while not in the contrary case, in which dispensation would have to be requested, in spite of conversion, given that in the external forum the existence of the offense would have to be presumed. Vatican Council II (*UR* 3) and in accordance with it, *DE*/1967, 19 affirms that "the brothers who were born and baptized outside the communion of the Catholic Church are to be carefully differentiated from those who, baptized in the Catholic Church, publicly and consciously renounced their faith." Canon 2314, which corresponds to the current canon 1364, does not apply to the former, it is said. Furthermore, by virtue of the current c. 11, the ecclesiastical penal laws are no longer applicable to them.

By virtue of c. 1323, a person who has not yet completed the sixteenth year of age does not incur in the censure, even if it is a matter of someone who was baptized in the Catholic Church who was morally culpable of apostasy or of embracing heresy or schism. Once the person is older than sixteen, the existence of a delict must be presumed, in accordance with c. 1321 § 3, if the person remains in apostasy, heresy or

4. *Fontes*, IV, no. 737.
5. *Fontes*, IV, nos. 1129, 1131 and 1196.

schism, provided that the person has not been taught apostasy, heresy or schism since childhood.

Thus, it is assumed that only those who, once they were over seven years of age, abandoned the Catholic Church and after sixteen years have remained outside of it, are affected by the irregularity. The presumption, therefore, can never extend to someone who has not been baptized.

As Gilbert states,[6] "it is important not to get lost in legalisms regarding this matter and lose sight of its true scope. The Law exists due to the importance of the sound faith of the candidates to orders." Canon 1029 indicates that only those who have integral faith may be ordained.

3°) This precept addresses the cases of bigamy, understanding this expression in the sense of canonical tradition,[7] according to which bigamists are equated to those who break their promise of celibacy *coram Ecclesia: similitude bigamy,* born of *spiritual marriage.*

We are not dealing with a series of delicts, which is evident in the case of bigamy in its strict sense, which no longer has the character of a delict in the Code. We are instead dealing with a series of presumptions that may possibly have a delictive character (see commentary on c. 1040). It is, therefore, irrelevant whether the bigamy is committed before or after baptism, by a Catholic or by a non-Catholic.

Regarding the old discipline, the presumption is restricted to the *public and perpetual* vow of chastity.

4°) In studying the cases of irregularity by homicide previous to *CIC*/1917, the extent to which it was understood that someone had incurred in this irregularity, which included practically every type of homicide, was notable. To restrict the presumption, *CIC*/1917 added that homicide had to be *voluntary.* It was also clear, in accordance with c. 983, that the homicide in question had to constitute an offense.

Because of the word *voluntary,* the canonists have excluded homicide by negligence and exaggerated legitimate defense. The expression is technically ambiguous in penal law, in which it is difficult to admit an intermediary category between malicious offense and culpable offense. For this reason, we understand that instead of speculating about the scope that should be attributed to the word *voluntary,* it is necessary to understand the mind of the legislator (cf. c. 17). Such intention seems to include the presumption of all penally punishable homicides, those that deserve punishment, and to exclude those that are not.

6. E.J. GILBERT, *The Code...*, cit., see c. 1041, p. 730.
7. Cf. Council of Angora (314) c. 19 (Mansi, II, col. 519); and c. 27, q. 1, c. 24.

The response from CPI of May 25, 1988[8] declares, in accordance with c. 1398 (see commentary), as well as the present canon, that abortion extends to the very moment of conception.

The expression *effectu secuto* of c. 1041, 4° refers not only to abortion, but also to homicide. In other words, in the case of "abortion," as well as "homicide," the motive must have been verified.

Even though the previous Code did not mention this, the makers of this doctrine had come to the conclusion that cooperation had to be positive in order to incur an impediment. Positive cooperation means intentional support of the result. Participation that was not intended toward the result or in which the attempt failed does not incur an irregularity.[9]

5°) In this number, three situations are considered: self mutilation, mutilation of another person and attempted suicide. In the mutilation, the act, and here a technically precise word is used, must be *malicious*. Such a requirement was not present in *CIC*/1917.

Attempted suicide is not merely an attempt, but a failed suicide, in which the act of suicide does not produce its effect due to causes that are extraneous. (cf. c. 1328).

Mutilation that is necessary for health reasons or for reasons of necessity does not generate an irregularity. The mutilation must be *grave*, and for its evaluation, the jurisprudence over this matter must be taken into account.

6°) The previous discipline (cf. c. 985, 7° *CIC*/1917) spoke of exercising an act of "the power of orders which is reserved to those ordained *in sacris*." The priesthood, the diaconate and the subdiaconate were understood to be sacred orders (cf. c. 949 *CIC*/1917), and the episcopate was not considered an order. In the current discipline, irregularity is limited to the acts, of the power of orders, reserved to bishops and priests. Such reservations are recorded in the liturgical books.

The current precept requires the penalty to have been declared or imposed, thus making a complicated casuistry disappear. In virtue of c. 1335, a person does not incur the irregularity of censure even if declared when celebrating sacraments or sacramentals whenever it is necessary to take care of the faithful who are in danger of death.

8. *AAS* 80 (1988), p. 1818.

9. Thus K. LÜDICKE, *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), see c. 1041.

1042 Sunt a recipiendis ordinibus simpliciter impediti:

1° vir uxorem habens, nisi ad diaconatum permanentem legitime destinetur;

2° qui officium vel administrationem gerit clericis ad normam cann. 285 et 286 vetitam cuius rationem reddere debet, donec, depositis officio et administratione atque rationibus redditis, liber factus sit;

3° neophytus, nisi, iudicio Ordinarii, sufficienter probatus fuerit.

The following are simply impeded from receiving orders:

1° a man who has a wife, unless he is lawfully destined for the permanent diaconate;

2° one who exercises an office or administration forbidden to clerics, in accordance with cann. 285 and 286, of which he must render an account; the impediment binds until such time as, having relinquished the office and administration and rendered the account, he has been freed;

3° a neophyte, unless, in the judgement of the Ordinary, he has been sufficiently tested.

SOURCES: 1°: c. 987,2°; *SDO* 11, 13
2°: c. 987,3°
3°: c. 987,6°

CROSS REFERENCES: c. 288

COMMENTARY

José María González del Valle

(For the concept of "simple impediment" see commentary on c. 1040)

1°) The impediment to receive orders exists as long as a matrimonial bond exists, which can cease by death and, in cases of a ratified but non-consummated marriages and in marriage between a baptized and a non-baptized person, by dispensation (cf. cc. 1141–1150, and Instruction of the SCDF of December 6, 1973).

Similar to that which occurs with the impediment of the bond addressed in c. 1085, the impediment addressed in c. 1042, 1° is not produced

as a consequence of the celebration of a null marriage. Nonetheless, as long as this nullity has not been declared by executive judgement, it is presumed in the external forum that the celebrated marriage is valid. Consequently, the existence of the impediment addressed in c. 1042, 1° is also presumed to exist. From this it follows that, upon obtaining the declaration of nullity of the marriage after the ordination, it is demonstrated that the impediment addressed in c. 1042, 1° had not been incurred.

When the norm on which we are commenting is said to be *legitimately* destined for the permanent diaconate, the adverb refers to the marital situation of the candidate. Thus, the person who has not received the sacrament of confirmation or does not fulfill some of the requisites considered in cc. 1033ff. does not incur an impediment, although the destination and the consequent ordination would be illegitimate.

Canon 1031 § 2 establishes that a married person can only be admitted to the permanent diaconate if he is at least thirty-five years of age, and with the consent of his wife. Consequently, the married man who is destined for the permanent diaconate but is not of that age or does not have the consent of his wife is simply impeded from receiving orders.

Some Episcopal Conferences, in addition to the thirty-five years of age required in c. 1031 § 2, add the requirement that the candidate must have been married at least five years. In such a case, the ordination for the permanent diaconate without the meeting of the requisite of the five years would also be illegitimate. Now, as the establishment of impediments is reserved to the Holy See, the impediment we examine here does not admit possible dispositions of an Episcopal Conference, although illegitimacy originates in the ordination to the permanent diaconate.

2°) It would not be appropriate to apply this impediment to the permanent diaconate, in the tenor of c. 288. Canons 285 and 286 prohibit clerics from a series of professional activities and even from all those that, although they are not improper, are nonetheless foreign to the clerical state. The impediment is restricted to administrative positions or jobs that entail the rendering of account. Thus, although public positions that entail participation in the exercise of civil power are generally prohibited, such prohibition does not cause an impediment.

The situation is limited to those positions or administrations relative to non-ecclesiastical matters. It includes any profession or secular office that entails an obligation to render accounts, such as treasurer, accountant, manager or various other offices proper to a private enterprise with a public function. While they do not constitute professions, some specific functions are also included, such as executor, curator, guardian, guarantor, fund trustee, and so forth. These non-professional activities may be carried out with respect to members of one's family for which one is responsible.

The dispensation from this impediment is reserved to the ordinary (cf. c. 1047). Nonetheless, it is common for the impediment to cease in fact. In order for this to happen, it is necessary that the candidate had rendered accounts, that these must have been accepted and, then , must resign from the position, office or function. Upon becoming free of the obligation to render accounts, the candidate becomes free of the impediment as well.

3°) A neophyte is understood as a person of adult age who converted to the faith and received baptism in absolute form. It does not apply to those who, having rejected the errors of heresy, return through baptism *sub conditione*. Adult age, in this case, should be understood as fourteen years, according to c. 1478 § 3.

This norm, which reproduces c. 987, 6° *CIC*/1917, similarly poses a question as to whether this is an irregularity or simple impediment. If all neophytes are understood as being affected by this norm merely by the fact of being neophytes, in such a way that dispensation is necessary to remove the prohibition, we would find ourselves facing an irregularity. But this does not appear to be the sense of the norm, which systematically, as much in the current Code as in the prior, is enumerated within the simple impediments and not within the irregularities. The action of the ordinary, therefore, will consist of proving whether or not the neophyte has been sufficiently tested, not in dispensing the neophyte who has not been sufficiently tested. The configuration of the impediment—in my opinion—is similar to those regulated in cc. 1041, 1° and 1044 § 2, 2° in which the action of the ordinary does not consist in dispensing, but in proving whether or not the presumption applies.

A practice followed in many seminaries is not to admit as a candidate a person who has not lived the faith for at least three years.

1043 Christifideles obligatione tenentur impedimenta ad sacros ordines, si qua norint, Ordinario vel parocho ante ordinationem revelandi.

Christ's faithful are bound to reveal, before ordination, to the Ordinary or to the parish priest, such impediments to sacred orders as they may know about.

SOURCES: c. 999

CROSS REFERENCES: cc. 1069, 1548

COMMENTARY

José María González del Valle

This canon corresponds with 1069, pertaining to marriage, and the majority of considerations that apply to it are equally applicable to the canon discussed here.

Canon 51 of the IV Council of Lateran[1] made the custom that existed in some places of publishing the banns of marriage into a universal law. Based on this and other legal texts,[2] it has been indicated that the obligation to report impediments is not merely an obligation of ecclesiastical law, and that it still exists even if the marriage banns are not published or if there is knowledge of plans for marriage by another means.

Canon 1043 indicates that one is bound to the obligation to reveal any known impediments to either the ordinary or the parish priest. Canon 1069 indicates that one is bound to notify the local ordinary or the parish priest. In the latter case the parish priest and the ordinary in question should be understood to be those of the parish or diocese competent to publish the banns. Such criterion is invalid in the case of c. 1043, since the corresponding publications were eliminated in the new code. In the new enumeration of the proper functions of the parish priest (cf. c. 530) that of publication of ordinations has also been eliminated.

"ordinary" must be understood to be the one who issues the dimissorial letters, or the local ordinary where the ordination will take place, but not the bishop or bishops who administer the sacrament of orders, since they may not be Ordinaries (cf. c. 134). Consequently, revealing the

1. Cf. *X* IV, 3, 1.
2. Cf. *X* IV, 11, 7; *X* IV, 11, 27; *X* IV, 18, 6.

existence of an impediment during the course of the ceremony of ordination the bishop asks those present if they know of any reason to exclude the person being ordained that does not comply with c. 1043. In addition, commentators of the norm contained in this canon usually indicate that the impediment must be made known at an opportune time, which is rarely during the ceremony of ordination.

The parish priest should not be understood to be the priest of the place where the ordination will take place, since they are generally celebrated in the cathedral (c. 1011). Rather, in this case it should be understood to be the parish priest of the ordenandi.

The obligation mentioned refers to cc. 1041 and 1042, but not to 1044. The impediment must be considered in the broad sense, including both simple impediment and irregularities (see, for this distinction, commentary on c. 1040). The canon we are discussing only obligates one to reveal impediments to receiving orders, but not the absence of other requirements for the liciety of the ordination, such as not having received the sacrament of confirmation. Nonetheless, the responsibility of the faithful regarding the suitability of candidates for the sacrament of orders extends beyond compliance with this canon.

The cases considered in c. 1548 exempt one from the obligation to reveal impediments.

1044 **§ 1. Ad exercendos ordines receptos sunt irregulares:**
1° qui irregularitate ad ordines recipiendos dum afficiebatur, illegitime ordines recepit;
2° qui delictum commisit, de quo in can. 1041, n. 2, si delictum est publicum;
3° qui delictum commisit, de quibus in can. 1041, nn. 3, 4, 5, 6.

§ 2. Ab ordinibus exercendis impediuntur:
1° qui impedimento ad ordines recipiendos detentus, illegitime ordines recepit;
2° qui amentia aliave infirmitate psychica de qua in can. 1041, n. 1, afficitur, donec Ordinarius, consulto perito, eiusdem ordinis exercitium permiserit.

§ 1. The following are irregular for the exercise of orders already received:
1° one who, while bound by an irregularity for the reception of orders, unlawfully received orders;
2° one who committed the offense mentioned in can. 1041 n. 2, if the offense is public;
3° one who committed any of the offenses mentioned in can. 1041 nn. 3, 4, 5, 6.

§ 2 The following are impeded from the exercise of orders:
1° one who, while bound by an impediment to the reception of orders, unlawfully received orders;
2° one who suffers from insanity or from some other psychological infirmity mentioned in can. 1041 n. 1, until such time as the Ordinary, having consulted an expert, has allowed the exercise of the order in question.

SOURCES: § 1: c. 968 § 2
§ 1,1°: c. 985 § 1
§ 1,2°: c. 985 §§ 3–5 et 7
§ 2: c. 984 § 3

CROSS REFERENCES: c. 1041

COMMENTARY

José María González del Valle

(See commentary on c. 1040, for the distinction between irregularities arising from delicts and irregularities not arising from delicts. There it is affirmed that in c. 1041, except in 2°, irregularities due to delicts are not considered).

I. It is stated in § 1, 1° that an irregularity to receive orders causes an irregularity to exercise them. Paragraph 1, 2°–3° considers situations that occurred after the reception of orders. Paragraph 1, 2° considers the same offense as c. 1041, 2° when the offense is public. Paragraph 1, 3° considers cases listed in c. 1041, 3°–6°, when they constitute an offense.

When the irregularity consists of a delict, the exempting causes, such as those considered in c. 1323, although they do not directly excuse the irregularity, do so indirectly, since the case (delict) does not cause the irregularity.

Only those situations set forth in c. 1044 are irregularities and impediments to exercise orders. Other prohibitions to exercise orders, such as those considered in cc. 1709, 1383, or those that arise from having incurred a censure, are not impediments.

Before the *CIC* some authors in the past defined irregularities and impediments as situations that would *directly* impede the reception of sacred orders and *indirectly* impede their exercise. There was not, as now occurs with this newly coined norm, a special canon to indicate the situations that impede the exercise of the order received, and another for those that impede the reception of orders. Nonetheless, according to c. 1044, all those who have received orders illegitimately, being affected by an irregularity or another impediment, are also irregular or are impeded form exercising the order received.

The distinction between irregularities and impediments for receiving orders and exercising those already received is not applied systematically in a clear manner. Thus, cc. 1047 § 3 and 1048 should refer to c. 1044, and not to c. 1041. The reason this was not done this way appears to be that, as c. 1044 is written, making reference to 1041, it would be difficult to mention the various situations to which c. 1044 refers. Canon 1049 § 1 (see commentary) should refer, in addition to 1041, 4°, to 1044. Such oversight must be compensated with c. 63.

II. The canon we are discussing refers in § 1 to irregularities, and in § 2 to impediments.

1. *Irregularities* (§ 1)

1°) This norm covers those situations of c. 1041 when, in spite of the existence of an irregularity, orders are received.

The adverb *illegitime* appears redundant, since the act of receiving orders while affected by an irregularity causes it to be illegitimate. It does not appear that the legislator wished to classify those receiving orders as being affected by an irregularity according to whether or not they were received legitimately or illegitimately, providing that only the former incurred an irregularity for exercising the orders received. In reality, it would not be impossible to imagine a case by virtue of which someone could receive orders legitimately, while affected by an irregularity. But no canon, before or after this one, has made reference to this possibility.

These cases do not include those persons who, never having belonged to the Catholic Church (see commentary on c. 1041, 2°), and after having validly received the sacrament of orders, join the Catholic Church. This is because at the moment of ordination they were not affected by c. 1041. It does not affect those who belonged to any of the eastern Churches at the moment of their ordination, and therefore under their juridical law, not that of c. 1041 *CIC*, who later pass to the Latin rite. Thus, although the situation has the character of an impediment in the *CIC*, it did not have such character in the eastern Churches when it took place.

2°) Canon 1041 § 1, 2° (irregularity to receive orders) does not require that the offense of apostasy, heresy or schism be "public," while c. 1044, 2° (irregularity to exercise orders) does require it. Because the concept of "public" disappeared from book VI, we will have to go to c. 2197 of the *CIC*/1917 that states: "A delict is: 1° *Public*, if it is already commonly known or the circumstances are such as to lead to the conclusion that it can and will easily become so ... 4° *Occult*, if not public; materially occult if the delict itself is hidden; *formally occult* if its imputability is hidden ."

3°) In the corresponding canon of the *CCEO* (c. 763,2°) it states "qui delicta vel actus commisit, de quibus in can.," etc. Apart from a major grammatical correction—stit is "delicta de quibus" and not "delictum de quibus"—it seems to imply that impediments for the exercise of received orders are not constituted only of delicts, but also of other actions classified there. The Latin Code does not say "vel actus," since those actions that to not constitute delicts, although contained in nos. 3°-6° of c. 1041 must be excluded as causes of irregularity for the exercise of orders.

The distinction of *public* in contrast with *occult* also applies to these delicts. This is only significant, however, with regard to dispensation.

The only possible punishable delict considered in no. 3° that we are discussing is that of a cleric attempting marriage, which is considered in

c. 1394 § 1. The remaining cases either do not constitute delicts or cannot be incurred by an already ordained man.

The delicts of homicide and abortion are regulated respectively in cc. 1397 and 1398.

Mutilation appears regulated from the penal perspective in c. 1397. This only applies to mutilation of others, not self-mutilation. Suicide is not constitutive of a delict.

Canon 1397 does not require that mutilation be malicious in order to constitute a delict. Consequently, the presumption is broader in the case of a delict than in the case of irregularity. It cannot be interpreted that one who committed a simple culpable mutilation is irregular for the exercise of orders and not having been so for their reception. Canon 1044 § 2, 3° is to be interpreted as meaning that when reference is made to a malicious supposition of fact, there must be a malicious delict in order to incur an irregularity, although in the corresponding penal precept culpable delicts are also punished.

The carrying out of an act of the power of orders reserved to bishops or presbyters, is considered in cc. 1378 § 2, 1°–2°, 1379 and 1384 as constituting a delict.

2. *Impediments* (§ 2)

1°) It is appropriate to apply the same considerations, with reference to impediments, not to irregularities, made in the commentary of the first number of the previous section.

2°) See commentary on c. 1041, 1°. It is fitting to add here that, although some doctors sustain the irreversibility of certain psychological disorders, not only those hypotheses are considered here. Further, in law, the concept of insanity is credited to situations that perhaps do not deserve it from a medical point of view. Certain viral infections or toxins e.g., due to a kidney deficiency, may affect the use of reason. For them to cease, it is necessary to eliminate the toxins or infection, without requiring psychiatric treatment. Other types of mental infirmities are more difficult to eradicate, although that may occur.

1045 Ignorantia irregularitatum atque impedimentorum ab eisdem non eximit.

Ignorance of irregularities and impediments does not exempt from them.

SOURCES: c. 988

CROSS REFERENCES: cc. 14, 15

COMMENTARY

José María González del Valle

1. This canon applies to irregularities and impediments which are laid out generally in c. 15. The canons that establish irregularities and impediments are incapacitating laws, but not invalidating (see commentary on c. 1040, *in fine*).

2. Canon 988 *CIC*/1917 stated: "Ignorance of an irregularity either from a delict or a defect does not excuse one from an impediment." Also, c. 986 stated: "This delict did not produce an irregularity unless there was grave sin." Combining both requirements, the commentators of the *CIC*/1917 have noted, on one hand, that the reason for irregularities is not penal, but rather to ensure the dignity and honorability of the ecclesiastical state. Therefore they were not to be considered non-existent because of the mere fact of having incurred them without fault or by ignorance. However, based on the necessity of committing a grave sin in order to incur irregularities by a delict, the commentators concluded that, in addressing an irregularity by delict, ignorance could suppress the gravity of the sin and consequently free one from the irregularity.

The previous code introduced the equation of sin with delict. Into the notion of irregularity by a delict it introduced the idea that it simultaneously constituted a grave external sin, committed after baptism whether public or occult (cf. c. 986 *CIC*/1917). That is, the sin in question was described as having the proper elements of a delict. Under such conditions, it was impossible not to arrive at the conclusion that ignorance ended up excusing the irregularity by a delict, in spite of the principle that ignorance does not excuse irregularities by a delict.

3. The *CIC* allows one to avoid such elaborate reasoning and better clarify the juridical nature of irregularities and impediments.

In the first place, c. 1045 has suppressed the express reference in which ignorance does not excuse irregularities because of a delict. It also

suppressed the content of c. 986 *CIC*/1917, with its mention of external grave sin whether public or occult, committed after baptism. And over all it has clearly separated delict from non-delict irregularities.

Consciously, c. 1041 mentions a series of suppositions that, although they are known to constitute delicts in the majority of cases, are not mentioned as such, except in the case of no. 2°, which is expressly attributed a delictive nature. On the other hand, c. 1044 alludes to those same behaviors when they do constitute delicts as distinct cases.

As in the case of matrimonial impediments, which have always been used as an example of the laws considered in c. 15, ignorance or error of the law do not prevent its efficacy. Precisely for this reason, all those impediments, which, like abduction, were configured in the ancient law as premises consistent with the commission of a delict, have been freed from the penal law, to the point of constituting premises distinct from, although similar to, the delict. However, while the impediment was understood to consist of the commission of a delict, what excused a delict excused the impediment.

Similarly, the legislator of 1983 freed from the penal law those irregularities considered in c. 1041 ,3°–6°, which in their day were considered *ex delicto*. Even homicide and abortion were cited in the canon as non-delictive situations, with the consequence that non-Catholics incur the corresponding irregularities. When, however, c. 1044 § 1, 2°-3° declares the suppositions referring to c. 1041, it limits the remission of cases of a delict. The will to make irregularity arise from the commission of a delict becomes very explicit. Thus, what excuses the corresponding delict prevents the existence of a supposition that establishes the irregularity.

All of that is compatible and consistent with the canon under discussion which, as we have said, applies the norm of c. 15 to irregularities and impediments, ("Ignorance or error concerning ... incapacitating laws does not prevent their efficacy"). Consequently, the ignorance of cc. 1044 § 1, 2°–3° and c. 1041, 2° does not prevent their efficacy. However, the ignorance discussed in c. 1323 may excuse the delict and consequently result in the failure to produce the suppositions of fact that the cited canons consider.

4. Irregularity and impediment are incurred if it falls upon the suppositions of fact considered in the canons that establish them, independently of whether or not there was good faith, ignorance or error.

The ignorance referred to in this canon does not include ignorance arising from the doubt of law considered in c. 14. However, it includes ignorance arising from the doubt of fact referred to in that same canon (see commentary on c. 1047 §§ 2 and 3).

1046 **Irregularitates et impedimenta multiplicantur ex diversis eorundem causis, non autem ex repetita eadem causa, nisi agatur de irregularitate ex homicidio voluntario aut ex procurato abortu, effectu secuto.**

Irregularities and impediments are multiplied if they arise from different causes, not however from the repetition of the same cause, unless it is a question of the irregularity arising from the commission of wilful homicide or from having actually procured an abortion.

SOURCES: c. 989

CROSS REFERENCES: cc. 1041, 1042, 1044

COMMENTARY

José María González del Valle

Each of the situations considered in cc. 1041, 1042 and 1044 are different causes. The same number as occurs with c. 1041, 3° may refer to various situations. Only in the cases of homicide and abortion does the repetition of the act give rise to a new cause, which is treated as a new irregularity for the purpose of dispensation, as is noted in c. 1049 § 2. The number of homicides and abortions is not to be counted in terms of the number of persons killed, but rather by the number of homicidal or abortive actions. Thus the abortion of one pregnancy of twins may constitute a single cause. Similarly, killing via the explosion of a bomb or by other means of an indeterminate number of persons may also constitute a single cause.

Canon 989 *CIC*/1917 did not mention abortion, but only homicide, among the irregularities whose repetition multiplied the irregularity. Under such conditions it was admissible to interpret, given the absence of express mention of abortion that was not absent from c. 985, 4°, that an irregularity was not multiplied by repeated abortions. With the new version of the canon that interpretation is not admissible.

Impediments are not multiplied by repetition of the causes in the rest of the cases. It should be kept in mind, nonetheless, that apostasy, heresy and schism constitute three distinct causes. The cause of "heresy," for example, is not multiplied by rejecting at different times distinct truths that must believed with divine and catholic faith.

1047 **§ 1. Uni Apostolicae Sedi reservatur dispensatio ab omnibus irregularitatibus, si factum quo innituntur ad forum iudiciale deductum fuerit.**

§ 2. Eidem etiam reservatur dispensatio ab irregularitatibus et impedimentis ad ordines recipiendos, quae sequuntur:

1° ab irregularitatibus ex delictis publicis, de quibus in can. 1041, nn. 2 et 3;

2° ab irregularitate ex delicto sive publico sive occulto, de quo in can. 1041, n. 4;

3° ab impedimento, de quo in can. 1042, n. 1.

§ 3. Apostolicae Sedi etiam reservatur dispensatio ab irregularitatibus ad exercitium ordinis suscepti, de quibus in can. 1041, n. 3, in casibus publicis tantum, atque in eodem canone, n. 4, etiam in casibus occultis.

§ 4. Ab irregularitatibus et impedimentis Sanctae Sedi non reservatis dispensare valet Ordinarius.

§ 1. If the fact on which they are based has been brought to the judicial forum, dispensation from all irregularities is reserved to the Apostolic See alone.

§ 2. Dispensation from the following irregularities and impediments to the reception of orders is also reserved to the Apostolic See:

1° irregularities arising from the offences mentioned in can. 1041 nn. 2 and 3, if they are public;

2° an irregularity arising from the offence, whether public or occult, mentioned in can. 1041 n. 4;

3° the impediment mentioned in can. 1042 n. 1.

§ 3. To the Apostolic See is also reserved the dispensation from the irregularities for the exercise of an order received mentioned in can. 1041 n. 3 but only in public cases, and in n. 4 of the same canon even in occult cases.

§ 4. The Ordinary can dispense from irregularities and impediments not reserved to the Holy See.

SOURCES: § 1: c. 990 § 1
§ 2: *EM* IX, 9
§ 3: *PM* 17; *CAd* I

CROSS REFERENCES: cc. 91, 134 § 1, 361

COMMENTARY

José María González del Valle

This canon, which determines the system of reserving the dispensations from irregularities and impediments, was inspired by c. 990 § 1 of the *CIC*/1917; *Pastorale Munus*, 16–17 and *De Episcoporum muneribus*, IX, 9–10; and *CAd* 7–8.

In contrast with what occurred in c. 990 of the *CIC*/1917, the mp *Pastorale Munus* and Rescr. *Cum admotae*, the present canon is written in such a way that those impediments and irregularities that are not specifically mentioned as being reserved should not be considered reserved to the Holy See.

1. Commenting on § 1, Lüdicke[1] considers the judicial forum mentioned in this canon to be only that of an ecclesiastical tribunal. Gilbert,[2] following Coronata, understands that the forum in question could be either ecclesiastical or secular. This opinion appears more certain to us, since the ecclesiastical penal Law recognizes many offenses as being a mixed forum, and culpability in a secular court usually has great publicity and transcends both the social and the juridical.

In the tenor of c. 1512, it must be understood that the fact on which the irregularity is based has been brought to the judicial forum when notification of the citation has been legitimately made to the interested party, or when the parties have appeared before the judge to try the cause.

2. Paragraph 2 addresses irregularities for receiving orders that are reserved to the Holy See, while § 3 deals with irregularities for the exercise of orders. The remissions make this a jumbled regulation; therefore, we will concentrate our discussion on facts. All irregularities reserved to the Holy See must come from facts that constitute a delict.

The irregularity to receive orders arising from the delicts of heresy, apostasy and schism is reserved to the Holy See, if they are public. However, while they may be public, irregularities arising from the commission of those delicts are not reserved to the Holy See if they are irregularities for the exercise of orders received. Nonetheless, those delicts have been brought to the judicial forum, the corresponding irregularity is reserved to the Holy See by virtue of § 1.

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1. K. LÜDICKE, *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen 1985), see c. 1047.
2. E.J. GILBERT, *The Code of Canon Law. A Text and Commentary* (New York 1991), see c. 1047, p. 732.

Irregularities arising from the attempted marriage of a cleric or of a religious who has taken a public perpetual vow of chastity are only reserved to the Holy See if the delict is public. This applies to both the reception of orders and the exercise of orders received.

Irregularities arising from the commission of willful homicides, procuring abortions, as well as positive cooperation in both, are reserved to the Holy See, whether these delicts are public or occult. This applies to both the irregularities to receive orders and the exercise of the orders received.

The remaining irregularities, and those same cases when they are not constitutive of a delict, are not reserved to the Holy See and can be dispensed by the ordinary.

3. The only simple impediment reserved to the Holy See is that of c. 1042, 1°. When the Holy See dispenses from this impediment, it does not simultaneously dispense from c. 277. It is therefore necessary to meet one of the legitimate conditions that allow the candidate not to marry. It is not considered sufficient that, in the tenor of the canonical legislation, the woman had lost conjugal rights (by adultery, abandonment, etc.). The consent of the women is enough, when accompanied by sufficient guarantees.

4. As we have indicated, the cases listed in cc. 1041, 1° and 1044 § 2, 2° do not allow a dispensation, but rather the proof that the situation has ceased. Throughout the Code different situations are considered, especially in the regulation of marriage, in which dementia and other psychological incapacities are juridically relevant. However, these are not considered a dispensation, but only prove, with the help of experts, whether or not the situation exists. This proof belongs to the ordinary. A dispensation, properly speaking, whose just cause would be very difficult to represent, would be reserved to the Holy See, in spite of the fact that § 4 states the principle that irregularities and dispensations not reserved to the Holy See can be dispensed by the ordinary. In matters of irregularities and impediments, by virtue of c. 18, a strict interpretation regarding each case is applied. However, in matters of the power of dispensation, which do not constitute a right but rather a conferring of power, c. 18 does not apply.

5. The Holy See usually grants a dispensation for the exercise of orders received, when dealing with a priest, of an irregularity arising from voluntary homicide or the procuring of an abortion, when the case is occult. This must be kept in mind when applying c. 87 § 2 and c. 14.

By virtue of c. 14, in doubt of law, incapacitating laws do not bind, so that in such a case a dispensation is not necessary. Although doubt of fact broadens the power of dispensation in the tenor of c. 14, that type of doubt does not prevent the candidate from incurring the corresponding impediment. If the dispensation has not been obtained *ad cautela*, subsequent knowledge can demonstrate whether or not the impediment, whose

existence was doubted at the time, has been incurred. On the other hand, if a subsequent authentic interpretation, even if it was merely declarative, clarifies the doubt of law regarding the existence of the impediment, it would not be incurred as a result.

6. (§ 4) Canon 990 § 1 of the *CIC*/1917, which corresponds with the canon we are discussing here, uses the expression "Ordinary as regards his own subjects." The current norm says simply "Ordinary." The disposition of the Council of Trent, from which this norm arises, used the expression "bishop." Given these expressions, it was understood after the *CIC*/1917 that the power of the bishop was not limited to his proper subjects, that a dispensation could be granted by the ordaining bishop, and that, for the exercise of the order, the bishop of the domicile could grant a dispensation.

The expression "Ordinary," already used in the *CIC*/1917, clearly did not indicate only bishops (cf. cc. 134 § 1, 368), but also major Superiors of clerical religious institutes of pontifical right and clerical societies of apostolic life of pontifical right, who had at least executive ordinary power. Many major religious Superiors have possessed and possess wide apostolic privileges. As long as these exist (cf. c. 4), they have, in their capacity as ordinary, the same powers as diocesan Ordinaries.

As cc. 1047 and 1049 currently use the expression "ordinary," and not "ordinary as regards his own subjects," it is clear that, by virtue of c. 91, the faculty of Ordinaries to dispense from irregularities and impediments not reserved to the Holy See extends to their subjects, even when found outside of their territory, and although they may be absent from it. It also applies to travelers who are in fact present in the territory, and to the ordinary himself. That is, the same criteria are applied to impediments to receive orders and to exercise orders received that are applied in c. 1078 § 1 with respect to matrimonial impediments, although not expressly mentioned.

1048 **In casibus occultis urgentioribus, si adiri nequeat Ordinarius aut cum de irregularitatibus agatur de quibus in can. 1041, nn. 3 et 4, Paenitentiaria, et si periculum immineat gravis damni aut infamiae, potest qui irregularitate ab ordine exercendo impeditur eundem exercere, firmo tamen manente onere quam primum recurrendi ad Ordinarium aut Paenitentiariam, reticito nomine et per confessarium.**

In the more urgent occult cases, if the Ordinary or, in the case of the irregularities mentioned in can. 1041 nn. 3 and 4, the Penitentiary cannot be approached, and if there is imminent danger of serious harm or loss of reputation, the person who is irregular for the exercise of an order may exercise it. There remains, however, the obligation of his having recourse as soon as possible to the Ordinary or the Penitentiary, without revealing his name, and through a confessor.

SOURCES: c. 990 § 2; *EM* IX, 10

CROSS REFERENCES: c. 1079 § 2

COMMENTARY

José María González del Valle

1. The drafting of this canon depended on the text of *De Episcoporum muneribus*, IX, 10; c. 990 § 2 *CIC*/1917, which corresponds with the canon we are discussing here, and on cc. 2252 and 2254 *CIC*/1917, which correspond to the current c. 1357. All the cited canons have a common principal source: the Decree of the SCHO of June 23, 1886.[1] This canon was also influenced by c. 2232 § 1 *CIC*/1917, which corresponds with the current c. 1352 § 2. The final result is a relatively innovative discipline, constructed with ancient manners of speaking.

This canon considers the specific situation of a *state of necessity*, which allows the person who is irregular for the exercise of an order to exercise it without requiring a dispensation. The case historically does not arise from the necessity to become free of the irregularity, but rather of censure. It was a decree from the Cardinals Inquisitors of March 28, 1906,

1. *Fontes*, IV, 1102.

approved by the Roman Pontiff the next day[2] and published in *AAS*[3] through a new decree of September 6, 1909, which, presuming the state of necessity considered in the decree of June 23, 1886, extended the faculty of absolution of censures foreseen in the decree to the dispensation of occult irregularities.

The case initially considered by the decree of June 23, 1886 underwent numerous modifications and adaptations, as a consequence of the appearance of new cases, discussed and answered, which gave rise to three suppositions in *CIC*/1917: cc. 990 § 2, 2252, and 2254 § 1. The casuistical character of the canon we are discussing, with a decretal flavor, calls for a meticulous analysis of its various elements, in order to correctly apply the parallel cases.

2. In its current formulation, the canon has two principal elements: an urgency to avoid the danger of grave harm or loss of reputation on one hand, and the impossibility to have recourse to the ordinary or the Penitentiary on the other.

a) The *urgency* is a primary featureof the case. In this canon, the urgency does not come from danger of death, that all is prepared for the wedding, or that the subject would have to remain in mortal sin, but rather from the need to avoid the danger of grave harm or loss of reputation.

The *danger of a loss of reputation* is derived from the fact that, as a consequence of observing the irregularity, a cleric who habitually, or even daily, exercises orders, should suddenly refrain from doing so. This could give rise to suspicion and harm his reputation. Such danger of a loss of reputation does not occur if the cleric is on vacation or does not habitually carry out pastoral work. The *danger of grave harm* can arise from the need to attend to the needs of the faithful. (For analogy, see c. 1335). It should be taken into account that failing to attend to the faithful spiritually may cause them grave harm. The scandal that may arise from this,scandal in general, is commonly considered as a type of grave harm.

b) Such danger is avoided by obtaining a dispensation. In this way, the need to avoid the danger of grave harm or loss of reputation is transformed into the necessity to obtain a dispensation. This need to obtain a dispensation is parallel to that of cc. 1079 and 1080, although those canons do not address avoidance of that danger, but rather avoidance of other evils. In c. 1357 § 1, (the corresponding canon to c. 2254 § 1 *CIC*/1917), the evil is avoided though the remission of a censure. In such cases it is considered impossible to obtain a dispensation when it cannot be done in time to avoid the evil, which in this canon is the danger of grave harm or loss of reputation.

2. *Fontes*, IV, 1288.
3. *AAS* 1 (1900), pp. 677–678.

The canon we are discussing here assumes that it is not possible to obtain a dispensation when it is too late and it would be useless. This occurs when it establishes a condition that for the person who has an irregularity to exercise the order, application could not be made to the ordinary or the Penitentiary, and at the same time, the obligation of having recourse as soon as possible to the ordinary or the Penitentiary is imposed. Evidently, the canon does not create the contradiction of obligating the person with the irregularity to accede (to the ordinary or the Penitentiary), in view of the fact that he cannot. The exercise of the order, in spite of the irregularity, does not result in an increase in the possibilities of acceding subsequently *per confessarium*, since this avenue was already open as a manner of access. Rather, it eliminates the danger of grave harm or loss of reputation, as a consequence of having exercised the order without dispensation, because it was impossible to obtain it in time.

3. The impossibility of approaching the ordinary has been studied principally in relation with c. 1079 § 2, which corresponds to c. 1044 *CIC*/1917. The writers of these canons consider a case in which the dispensation of an occult impediment is urgent, and they subordinate the obtaining of the dispensation because neither the ordinary nor the Holy See could be approached. The canonists concerned with interpreting this situation distinguish between physical and moral impossibility, and between ordinary and extraordinary means. Cappello posed the question of whether the bicycle, the automobile and the motorcycle were ordinary or extraordinary means.[4] Naz affirmed "having recourse to the ordinary means appealing to him or her by letter or personally, when the visit can be made easily on foot, even though another means could be used."[5]

Such a problem, according to c. 1079 § 2, is completely different from that of the canon that occupies us here, as its distinct origin, (inferred from the annotated Code of Gasparri), demonstrates. Obtaining dispensation of an irregularity to exercise orders from the ordinary presents a very different profile than obtaining a dispensation from an impediment to marry through approaching the ordinary. Reasonably, the cited authors did not compare the impossibility of having recourse to the ordinary in the case of obtaining dispensation of an impediment to marriage with the corresponding impossibility of the case of obtaining dispensation for an irregularity to exercise orders. They also do not clarify or interpret what *Ordinarius adiri nequeat* means in the case of dispensation of the irregularity; a task that we now undertake.

An apporach by the person who has an irregularity, which influences the problem of access to the ordinary in the case of c. 1079 § 2, must be excluded. In the case of the ordinary, because the legislation following the

4. F. CAPPELLO, *De matrimonio* (Turin 1961), no. 237, p. 225.

5. R. NAZ, *Traité de Droit canonique*, vol. II, *Des sacraments*, 2nd ed. revised by CH. DE CLERQ (Paris 1954), no. 369, p. 317.

Council of Trent was characterized by the establishment of a dissociation between those persons having jurisdiction in the external forum and those who possessed it in the internal forum. The person with an irregularity has no reason to incriminate himself before his bishop, Vicar general or Episcopal Vicars. This permission, and even protection, to hide the irregularity from the ordinary is demonstrated in the fact that the obligation to have recourse as soon as possible is done through a confessor without giving the name (the identity) of the person seeking the dispensation. To appear personally before the Penitentiary seems to be out of place and extraordinary means.

4. The canon considers that it may not be possible to have recourse to the ordinary or the Penitentiary. However, it does not indicate the term *a quo* of this impossibility. The same occurs in c. 1079 § 2, in which it is not specified for whom it would be impossible to approach the ordinary, because the situation of fact is produced. (The same vagueness appears in c. 1116).

Canon 61 permits a dispensation to be obtained through rescript requested by a person who is not the beneficiary of the dispensation. We understand there to be an impossibility when it is impossible for the beneficiary of the dispensation (the person who has an irregularity) to request it, even if a third person can do so in the favor of the beneficiary, and it would be easier for a third person to do it. That is, the impossibility to have recourse refers only to the person who has the irregularity.

In contrast to the previous idea is that of obtaining the dispensation through a third person (a representative), who exercises this function not in his own name , but rather in the name of, and on behalf of, the person with the irregularity, as well as for his benefit. Such a person can be a *confessarius* or lawyer, if we keep in mind that the irregularities to exercise orders generally arise from some delict and it may be necessary to provide an adequate defense, especially if the case becomes public.

Excluding the personal visit as a possible form of access, recourse can be made through a representative or personally in writing. However, neither of these means is assured of a rapid reply.

If recourse is made in writing without a representative, it is very possible that the competent Superior will not be inclined to grant the dispensation in the form of granting a favor, but only in a commissorial form. In such a case, it would be more useful to proceed *per confessarium.*

The person who has an irregularity, once he has decided to exercise the order so as to avoid the danger of a loss of reputation or grave harm, can have resource with the help of a confessor, in such a way that, if a dispensation is obtained quickly, the situation of having exercised the order without exhausting the possibilities of approaching the ordinary does not

arise. If the dispensation arrives late, the person with the irregularity will have already fulfilled the obligation of having recourse as soon as possible to the ordinary or the Penitentiary *per confessarium.*

A negative reply, more probable if the petition was carried out in such a way that the dispensation could not be granted in a commissorial form, would cause an obligation to suspend the exercise of the order.

5. We now move on to examine the term *ad quem* regarding the impossibility to have recourse: addressing the ordinary and the Penitentiary. The Penitentiary is competent in all occult cases, except those of heresy, apostasy and schism. The ordinary is competent to grant dispensation of the irregularity arising from attempted marriage in occult cases, whether or not they are urgent and, by virtue of c. 87, homicide and abortion, and cooperation in the same, if the supposition stated in c. 87 occurs. Thus, the ordinary and the Penitentiary each have a part in a cumulative power of dispensation.

The canon does not require that recourse could not be made to both the ordinary and the Penitentiary, except in the following cases: *a)* When addressing the cases indicated (attempted marriage, abortion, homicide and cooperation in abortion or homicide), recourse could not be made to the Penitentiary, although it could be made to the ordinary. *b)* Inversely, it is enough that recourse could not be made to the ordinary in order for the person with an irregularity to be able to exercise orders, although he could have recourse to the Penitentiary, in the remaining cases: malicious mutilation of another person and the delict of carrying out of an act reserved to the power of orders. This last situation applies almost exclusively to deacons.

Canon 91 greatly increased the number of Ordinaries, not only proper, but also local, where the person with the irregularity resides. Consequently, the impossibility to have recourse must refer to the local ordinary of the place where the person with the irregularity resides, which will generally be one's proper ordinary.

The impossibility of having recourse to those with delegated power, even general, is not necessary, even though a dispensation could be obtained from them.

6. The new discipline addresses a number of requirements. On one hand, in occult cases, it permits a cleric who habitually exercises orders to continue to do so. On the other hand, it does not suppress the need for a dispensation, nor entrusts it to the confessor, as in the old discipline. A dispensation remains reserved to the person who is competent to grant it in ordinary circumstances. It simply delays the granting. The new discipline appears clearer to us than the previous one, since the competencies of the Holy See and the Ordinaries are not withdrawn, as they were in the old discipline, in favor of the confessor who, in urgent cases, was the one to grant the dispensation.

A solution similar to the new discipline was foreseen in the project of the Code for sacramental absolution in the case of excommunication or interdict. The original *schema* permitted sacramental absolution without previous absolution of the censure, but the plenary session of the Code Commission of May 1977 rejected it.[6]

7. In c. 990 of the *CIC*/1917, the confessor was endowed with faculties of dispensation. In the current canon, the confessor does not grant the dispensation, but rather simply arranges the recourse, and is the proper interested party who judges whether or not the exercise of orders in this case is to be permitted, even though one is impeded by an irregularity. In the old discipline the confessor granted the dispensation, but there was no obligation to have subsequent recourse. In the current discipline, there is an obligation to have recourse, and to do so *per confessarium*, which allows a glimpse of the idea that the possible dispensation obtained will be granted in a commissorial form.

In recourse through the confessor, there is no requirement that the person seeking recourse confess to the person who arranges the recourse. Rather, this is done through the person who has the authority to hear confessions. However, except in recourse directed to the Penitentiary, the confessor must be one to whom the ordinary to whom the recourse is directed has given the authority to hear confessions.

8. Having exercised an order in the case of necessity and without dispensation, the obligation arises to have recourse as soon as possible. The discipline does not indicate a time limit for making recourse. However, not beginning the process as soon as possible excludes the possibility that the order was exercised legitimately.

Recourse and *appeal* are commonly understood as proceedings against a juridical act.[7] In the present canon, these terms lack such technical significance, and signify a petition for a dispensation. The terminology is reasonably explained in the old c. 2254, from which it originated and where it was used properly.

9. The solution furnished by this canon is only relatively new, because the canonists who treated this question affirmed that when recourse could not be made to the Holy See, neither the ordinary, nor the confessor, nor the order could be exercised without dispensation in situations more or less similar to those considered in this canon, the obligation remaining to have recourse as soon as possible to the competent Superior. Upon suppressing the faculties of dispensation of the confessor, the premise of this canon became a topic of discussion by the canonists (the

6. Cf. *Comm.* 9 (1977), p. 80.
7. Cf. cc. 166, 270, 333 § 3, 700, 1030, 1353, 1505 § 4, 1513 § 3, 1699 § 3, 1747 § 3.

impossibility of having recourse to the person who can grant the dispensation), with the same consequences: the order is exercised and recourse is made subsequently. Such a solution is now *normal* in urgent cases, and not merely an opinion of what was necessary to apply by analogy the old c. 2232 § 1, to invoke the authority of Suárez and to make excessive distinctions.

1049 **§ 1. In precibus ad obtinendam irregularitatum et impedimentorum dispensationem, omnes irregularitates et impedimenta indicanda sunt; attamen, dispensatio generalis valet etiam pro reticitis bona fide, exceptis irregularitatibus de quibus in can. 1041, n. 4, aliisve ad forum iudiciale deductis, non autem pro reticitis mala fide.**

§ 2. Si agatur de irregularitate ex voluntario homicidio aut ex procurato abortu, etiam numerus delictorum ad validitatem dispensationis exprimendus est.

§ 3. Dispensatio generalis ab irregularitatibus et impedimentis ad ordines recipiendos valet pro omnibus ordinibus.

§ 1. In a petition to obtain a dispensation from irregularities or impediments, all irregularities and impediments are to be mentioned. However, a general dispensation is valid also for those omitted in good faith, with the exception of the irregularities mentioned in can. 1041 n. 4, or of others which have been brought to the judicial forum; it is not, however, valid for those concealed in bad faith.

§ 2. If there is question of an irregularity arising from willful homicide or from a procured abortion, for the validity of the dispensation even the number of offences must be stated.

§ 3. A general dispensation from irregularities and impediments to the reception of orders is valid for all orders.

SOURCES: c. 991 §§ 1 et 3

CROSS REFERENCES: cc. 63, 1046

COMMENTARY

José María González del Valle

The first two paragraphs of this canon attempt to clarify the matter of irregularities and impediments within the scope of cc. 63 and 1046, although the wording is unfortunate.

1. The general dispensation addressed in § 1 applies both to *receiving* orders and to *exercising* orders received. (§ 3 addresses only the first).

The principle that "a general dispensation for receiving as well as for exercising orders is valid also for those omitted in good faith" is established, with the exception of the cases found in c. 1041, 4°: procured

abortion, willful homicide, and cooperation in the same, and all those that have been brought to the judicial forum.

From a literal interpretation of the norm, we can deduce upon first sight that in the situations of abortion, homicide, and cooperation in the same, the exception only applies in the case of dispensation *to receive* orders, (keeping in mind that the canon cited as the exception is 1041, 4°). Nonetheless, the dispensation *to exercise* orders, considered in a distinct canon (1044 § 1, 3°) would not be affected by said exception. However, we understand that such literal interpretation should not be accepted, since it is not appropriate to assume that the mind of the legislator was to modify the tenor of c. 991 § 1 *CIC*/1917. Further, even in the case of a literal interpretation, it would be necessary to consider c. 63, keeping in mind that according to style and canonical practice, in order for the dispensation to be valid, (including in the case of dispensation to exercise orders), it is also necessary to indicate in the petition the irregularities arising from the delict of a procured abortion, willful homicide and cooperation in the same.

2. Paragraph 2, which speaks of the number "of delicts," appears to refer to irregularities *to exercise* orders received, but not to irregularities *to receive* the orders, since the irregularities considered in c. 1044 § 1, 2°–3° presuppose the commission of a delict, while those of c. 1044 do not necessarily presuppose (see commentary c. 1040). Such would be the case of non-Catholics who commit an abortion or commit a homicide, when the canonical penal law was not to be applied to them. The literalness of the canon, therefore, is limited to situations of a delict. Nonetheless, by virtue of c. 1046, each homicide and each abortion constitute a different irregularity, contrary to what occurs in other situations, whose repetition does not always cause a new irregularity or impediment. Thus, in order for a dispensation to be valid, the number of abortions or homicides must be specified, whether the dispensation refers to the reception of orders or the exercise of orders received.

As in c. 1046, this canon mentions abortion together with homicide, contrary to the *CIC*/1917. The legal text does not give rise, therefore, to sustain the idea that it is not necessary to mention the number of abortions procured.

3. The orders referred to in § 3 are those of the diaconate, presbyterate and episcopate. The *CIC*/1917 (cf. c. 949) did not consider the episcopate to be an order, but it is nonetheless considered so in the current c. 1009. The revision of c. 991 § 3 of the *CIC*/1917, which corresponds with the canon we are discussing here, in the session of March 13–18, 1978,[1] rejected a canon edited in such a way that it excluded the episcopate from

1. Cf. *Comm.* 10 (1978), p. 203.

the orders to which this precept makes reference. Thus, it expressly sought not to limit its scope to the diaconate and the presbyterate.

As a consequence of what is laid out here, when the dispensation of an irregularity has been obtained, it is not necessary to request a new dispensation to receive a subsequent order, in the case that in the concession something else had been provided.

ART. 4
De documentis requisitis et de scrutinio

ART. 4
Documents Required and the Investigation

1050 **Ut quis ad sacros ordines promoveri possit, sequentia requiruntur documenta:**

1° testimonium de studiis rite peractis ad normam can. 1032;

2° si agatur de ordinandis ad presbyteratum, testimonium recepti diaconatus;

3° si agatur de promovendis ad diaconatum testimonium recepti baptismi et confirmationis, atque receptorum ministeriorum de quibus in can. 1035 item testimonium factae declarationis de qua in can. 1036, necnon, si ordinandus qui promovendus est ad diaconatum permanentem sit uxoratus, testimonia celebrati matrimonii et consensus uxoris.

For a person to be promoted to sacred orders, the following documents are required:

1° a certificate of studies duly completed in accordance with can. 1032;

2° for those to be ordained to the priesthood, a certificate of the reception of the diaconate;

3° for those to be promoted to the diaconate, certificates of the reception of baptism, of confirmation and of the ministries mentioned in can. 1035, and a certificate that the declaration mentioned in can. 1036 has been made; if an ordinand to be promoted to the permanent diaconate is married, a certificate of his marriage and testimony of his wife's consent.

SOURCES: c. 993,1° et 2°; *SDO* 11

1051 **Ad scrutinium de qualitatibus in ordinando requisitis quod attinet, serventur praescripta quae sequuntur:**

1° habeatur testimonium rectoris seminarii vel domus formationis de qualitatibus ad ordinem recipiendum requisitis, scilicet de candidati recta doctrina, genuina pietate, bonis moribus, aptitudine ad ministerium exercendum; itemque, rite peracta inquisitione, de eius status valetudinis physicae et psychicae;

2° Episcopus dioecesanus aut Superior maior, ut scrutinium rite peragatur, potest alia adhibere media quae sibi, pro temporis et loci adiunctis, utilia videantur, uti sunt litterae testimoniales, publicationes vel aliae informationes.

In the investigation of the requisite qualities of one who is to be ordained, the following provisions are to be observed:

1° there is to be a certificate from the rector of the seminary or of the house of formation, concerning the qualities required in the candidate for the reception of the order, namely sound doctrine, genuine piety, good moral behaviour, fitness for the exercise of the ministry; likewise, after proper investigation, a certificate of the candidate's state of physical and psychological health;

2° the diocesan Bishop or the major Superior may, in order properly to complete the investigation, use other means which, taking into account the circumstances of time and place, may seem useful, such as testimonial letters, public notices or other sources of information.

SOURCES: cc. 993,3°, 1000; SCDS Instr. *Quam ingens,* 27 dec. 1930 (*AAS* 23 [1931] 120–129); SCRit Instr. *Quantum religionis,* 1 dec. 1931 (*AAS* 24 [1932] 74–81); PIUS PP. XI, Enc. *Ad catholici Sacerdotii,* 20 dec. 1935, III (*AAS* 28 [1936] 41); PIUS PP. XII, Exhort. Ap. *Mentis nostrae,* 23 sep. 1950, III (*AAS* 42 [1950] 684); SCHO Monitum *Cum compertum,* 15 iun. 1961 [*AAS* 53 [1961] 571); PAULUS PP. VI, Let. Ap. *Summi Dei Verbum,* 4 nov. 1963 (*AAS* 55 [1963] 987–988); *OT* 6, 12; PAULUS PP. VI, Enc. *Sacerdotalis coelibatus,* 24 iun. 1967, 63, 71 (*AAS* 59 [1967] 682, 685); *RC* 5, 11, 23, 24; *RFIS* 39, 41, 4

1052 **§ 1. Ut Episcopus ordinationem iure proprio conferens ad eam procedere possit, ipsi constare debet documenta, de quibus in can. 1050, praesto esse atque, scrutinio ad normam iuris peracto, idoneitatem candidati positivis argumentis esse probatam.**

§ 2. Ut Episcopus ad ordinationem procedat alieni subditi, sufficit ut litterae dimissoriae referant eadem documenta praesto esse, scrutinium ad normam iuris esse peractum atque de idoneitate candidati constare; quod si promovendus sit sodalis instituti religiosi aut societatis vitae apostolicae, eaedem litterae insuper testari debent ipsum in institutum vel societatem definitive cooptatum fuisse et esse subditum Superioris qui dat litteras.

§ 3. Si, his omnibus non obstantibus, ob certas rationes Episcopus dubitat num candidatus sit idoneus ad ordines recipiendos, eundem ne promoveat.

§ 1. For a Bishop to proceed to an ordination which he is to confer by his own right, he must be satisfied that the documents mentioned in can. 1050 are at hand and that, as a result of the investigations prescribed by law, the suitability of the candidate has been positively established.

§ 2. For a Bishop to proceed to the ordination of someone not his own subject, it is sufficient that the dimissorial letters state that those documents are at hand, that the investigation has been conducted in accordance with the law, and that the candidate's suitability has been established. If the ordinand is a member of a religious institute or a society of apostolic life, these letters must also testify that he has been definitively enrolled in the institute or society and that he is a subject of the Superior who gives the letters.

§ 3. If, not withstanding all this, the Bishop has definite reasons for doubting that the candidate is suitable to receive orders, he is not to promote him.

SOURCES: § 1: PIUS PP. XI, Enc. *Ad catholici Sacerdotii,* 20 dec. 1935 (*AAS* 28 [1936] 39); *RFIS* 41
§ 2: c. 995; SCRit Instr. *Quantum religionis,* 1 dec. 1931 (*AAS* 24 [1932] 74–81)
§ 3: c. 997 § 2

CROSS REFERENCES: cc. 250, 1029, 1031 § 2, 1032, 1034, 1035

COMMENTARY

Luis Orfila

1. In these canons the legislator addresses those documents required in order for someone to be promoted to sacred orders, and the scrutiny that must be carried out before the orders of the diaconate or the priesthood are conferred.

The Church has constantly established that a candidate for sacred orders possess each of a series of qualities that makes the candidate worthy and suitable to the order to be received. We can say the origins of this concern are found in apostolic tradition: Saint Paul's letter to Timothy specifically advises: "Do not be hasty in the laying on of hands, nor participate in another man's sins" (1 Tim 5: 22).

Some qualities that are determined in c. 1051, 1°, affirm that the following must be certified: "concerning the qualities required in the candidate for the reception of the order, namely sound doctrine, genuine piety, good moral behaviour, fitness for the exercise of the ministry; likewise, after proper investigation, a certificate of the candidate's state of physical and psychological health." Logically, the enunciation of this canon does not constitute a novelty. It is an aspect that originates in the first moments of the birth of the Church. That is, it has always existed as an indisputable canonical tradition.

Saint Paul established a series of specific conditions for candidates to the priesthood and the diaconate. In the first case, in his Letters to Titus and Timothy (Tit 1: 5–9; 1 Tim 3: 2) we find a series of qualities that are requested in order to be chosen and ordained to the priesthood. They address some positive conditions (hospitality, lover of good, sobriety, justice, holiness, knowledge, and self-mastery. Saint Paul specifies this last positive note with the following words: that he may be able to exhort with sound doctrine and to refute those who contradict him). Also mentioned are some negative conditions (as excluding conditions, in the Letter to Titus, Saint Paul indicates five vices, that although they are noted for the bishop, are perfectly applicable to priests and deacons, namely: the candidate must not be proud, easily angered, violent, greedy for dishonest gain, or given to wine), which exclude the reception of sacred orders. For deacons, these qualities are stated in the Letter of Saint Paul to Timothy (1 Tim 3: 8–10.12). The canonical sources of the first centuries will repeat some requirements frequently. In order to establish them, it is sufficient to resort to the *Apostolic Constitutions* in which, after the rubric *Qualem esse oporteat episcopum et reliquos clericos*, we read: "Episcopus itaque sit sobrius, pudicus, honestus, constans, sedatus, non vinolentus, non percussor, sed modestus, non litigiosus, non argenti cupidus, non neophitus" (book II, ch. 1).

Before the edict of Constantine and Licinio, other requirements were found that were to be part of a person who aspired to be promoted to sacred orders (e.g., the fact of having committed a grave delict, after the reception of baptism, against the faith, chastity, the life and well-being others, were elements that impeded the reception of orders). All of these were aspects that would enter into what the canon calls "good conditions."

During this early period in the history of the Church, corporal defects did not impede a member of the faithful from receiving ordination. This is a direct consequence of what we encounter in the period of persecutions. The determinations of c. 77 of the *Canones Apostolorum* call attention to this aspect: "Si quis fuerit vel oculo laesus vel crure debilis, caeteroquin dignus, qui fiet episcopus, fiat: non enim vitium corporis polluit sed animae."

Upon achieving its freedom (c. 313) the Church established abundant legislation regarding the requirements for ordination, from both the moral point of view, and that of the candidate's physical and psychological integrity. We can affirm with absolute certainty that the quality of the ministers during the Christian-Roman period, and in general during all of the first millennium, was an essential concern of the Church. Its objective was to avoid the ordination of unsuitable or unworthy persons. Logically, the starting point was the conditions that Saint Paul had already indicated. From this scriptural base, conciliar and pontifical legislation by means if decrees developed and refineed the conditions for the future ordinandi. These formal sources of the Law are fully recognized in the canonical collections of the first millennium. There is not sufficient space here to provide a full historical expose regarding this legislation. However, we can point out the fact that in those times there were established a series of juridical conditions that were to be found in the person himself (age, health, morality, knowledge), and other conditions that affected the person's state of citizenship (freedom, emancipation, colonist, servant, slave), mental stability, which determine who is an a capable candidate, etc. These norms were later included in the Decree of Gratian and in various books that would later constitute the *Corpus Iuris Canonici*.[1] In the XVII century the Council of Trent,[2] and later some pontifical decrees and some decrees of the dicasteries of the Roman Curia again centered their attention on the qualities required by those aspiring to ordination.[3] All of those

1. D. 24, cc. 5–6; *X* I, 22, 2.
2. CONC. TRID., *Sess.* 23, *De reformatione*, c. 8.
3. INNOCENT XII Const. *Speculatores*, November 4, 1694, §§3–6; PIUS IX, Const. *Apostolicae Sedis*, October 12, 1869, § V, no. 3; S. CONGR. EPISCOPORUM ET REGULARIUM, Decr. *Auctis admodum*, November 4, 1892, no. 6; SCCouncil, Resp. *Neapolitana seu Vice Equen.*, February 12–March 12, 1718; *Romana seu Tusculana*, April 27, 1720; *Ausculana*, February 7, 1733 see 2; *Lunen-Sareanen*, May 29, 1824, 2, 3; SCR, Decl. September 7, 1909, VIII; Decl. May 31, 1910 1, 2: RomPont, tit. *De ordinibus conferendis*.

norms served as sources to the legislator before the promulgation of the *CIC*/1917.[4]

2. Canon 1050, whose immediate precedents are found in the *CIC*/1917, which in c. 993 specifically addressed the documents that were to acquired prior to the ordination of a deacon, enumerates the documents currently required by the legislator:

a) Certificate of completion of the prescribed studies. In this sense c. 1032 § 1 clearly determines that before receiving the diaconate, the fifth year of the cycle of philosophical-theological studies should be completed. As it is known, the ecclesiastical studies for those persons preparing for the priesthood include two years of philosophy and four years of theology (c. 250). Therefore, it is sufficient to have completed the third year of theology in order to receive the diaconate. The *curriculum* certificate of studies is to be provided by the place where the candidate has completed his studies: the same seminary, university or theological institute the candidate attended. In the case of the permanent diaconate, it should be kept in mind that (affirmed in § 3 of the same canon) the order should not be received before the time indicated for education has been completed. The content of this education remains determined by the respective Episcopal Conferences (cf. cc. 236, 1032 § 2).[5]

Although the studies that must be completed before receiving the priesthood are not determined, all appears to indicate that this order will be received once the candidate has carried out his studies as a whole.

b) Logically it should be established, in the case where the candidate will receive the order of priesthood, that the diaconate has been previously received.

c) Before receiving the diaconate it should be established through the corresponding certificate that the candidate has received the sacraments of baptism and confirmation. Also, as determined in c. 1035, the candidate should have received and exercised for a suitable time the ministries of lector and accolyte. The legislator has left this "suitable time" to the discretion of what is determined by the Episcopal Conferences. They determine only the amount of time that should be spent between receiving the ministry of accolyte and the diaconate: at least six months. Although c. 1050 says nothing in this respect, it should be kept in mind what is precisely indicated in c. 1034, that is, the rite of admission *inter candidatos*.

d) Finally, the canon reminds us of the need for a certificate of declaration of the freedom with which the orders are taken, that is, without any

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4. P. GASPARRI, *Fontes Codicis Iuris Canonici* (Rome 1948).

5. Cf. *Lettera della Congregazione per la Educazione Catolica*, Prot. N. 137/69 (*EV* 3, pp. 834–837). For the legislation that the Episcopal Conferences had determined concerning this aspect: cf. J.T. MARTÍN DE AGAR, *Legislazione delle Conferenze Episcopali complementare al CIC* (Milan 1990).

coercion. This declaration should be written in the candidate's own hand and presented to the competent authority. A married person who will receive the permanent diaconate is to present the corresponding marriage certificate and the consent of his wife to his ordination (cf. *SDO*, 11; c. 1031 § 2).

These documents should be obtained by the person granting the dimissorial letters or by the bishop who has the right to ordain (cf. c. 1052 §§ 1 and 2). Although it is not necessary to attach these documents to the dimmisorial letters, it is, instead, necessary to record that the documents have been obtained.

e) Along with the documents specified in c. 1050, and those to which we have briefly alluded, others exist to which no explicit reference is made but they are implicitly required by the Code. We have already mentioned one of them: the rite of admission *inter candidatos*[6] It appears to us that some others are also required such as the certificate that the aspirant to the diaconate has made the profession of faith in the presence of the ordinary or his delegate as is indicated in c. 833, 6°. There is also the requirement that the candidate has completed the spiritual exercises before receiving the corresponding order (cf. c. 1039: "... Before he proceeds to the ordination, the bishop must have assured himself that the candidates have duly made the retreat"). However, the truth is that the CCDDS, in its circular Letter *regarding the scrutinies on the suitability of the candidates*, of November 10, 1997, does not mention this latter document in its detailed appendices (which on the other hand do refer to the previous ones).[7]

3. Canon 1051 reaffirms what was outlined in the *CIC*/1917 (cc. 993,3° and 1000). It was inspired by the Instr. *Quam Ingens*,[8] and for religious in the Instr. *Quantum religionis*.[9] Those instructions finally ensure the suitability and vocation of the candidates to sacred orders.

Nonetheless, these are not the only criteria of interpretation that the legislator had taken into account when revising the content of this canon. All of a series of documents after the promulgation of the *CIC*/1917 and before the Vatican Council II constitute its inspiration;[10] as well as *Optatam totium* 6 and 12; *Renovationis causam* 5, 11, 23, 24; and *RFIS*, 39, 41–42.

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6. Those that are incorporated by vows to a clerical institute are not able to make this rite of admission (cf. c. 1034 § 2).

7. Cf. *Notitiae* 33 (1997), pp. 495–506; *Comm.* 20 (1998), pp. 50–59.

8. *AAS* 23 (1931), pp. 120–129.

9. *AAS* 24 (1932), pp. 74–81.

10. PIUS XI, Enc. *Ad catholici Sacerdotii*, December 20, 1935, III: *AAS* 28 (1936), p. 41; PIUS XII, Exhort. Ap. *Mentis nostrae*, September 23, 1950: *AAS* 42 (1950), p. 684; SCHO, Monitum *Cum compertum*, June 15, 1961: *AAS* 53 (1961), p. 571; PAUL VI, Litt. Ap. *Summi Dei Verbum*, November 4, 1963: ASS 55 (1963), pp. 987–988; idem, Enc. *Sacerdotalis coelibatus*, June 24, 1967, 63 and 71: ASS 59 (1967), pp. 682, 685.

Historically, the existence of a scrutiny of the qualifications of candidates for ordination was a deeply rooted tradition in the Church. It was already mentioned in the Council of Nicea (325) with regard to the ordination of priests (cf. c. 9). In the same IV century, in Africa, the III Council of Carthage ruled in the same sense, extending the scrutiny to clerics in general.[11] This aspect is later, in the middle of the V century, stressed in *Statuta Ecclesiae Antiqua*[12] and by the decrees of the Roman Pontiffs. Thus, Saint Leo the Great, in the decree to the bishops of Africa, affirms: "Quid est cito manus imponere, nisi ante aetatem, ante tempus examinis, ante meritum obedientiae, ante experientiam disciplinae sacerdotalem honorem tribuere non probatis" (*PL* 54, 647). Pope Gelasius I describes to the bishops of the Lucania the object of this scrutiny: "Si quis ...disciplinis monasterialibus eruditus ad clericale munus accedat, imprimis eius vita praeteritis acta temporibus inquiratur, si nullo gravi facinore probatur infectus; si secundam non habuit fortassis uxorem, nec a marito reiectam sortitus ostenditur; si poenitentiam publicam fortassis non gessit, nec ulla corporis parte vitiatus apparet; si servili... Si vero de laicis quispiam ecclesiasticis est aggregandus officiis, tanto sollicitius in singulis, quae superius comprehensa sunt, huiusmodi decet examinari personam, quantum inter mundanam et religiosam vitam constat esse discriminis" (*PL* 59, 49).

The legislation is considerably augmented and with each augmentation has refined the object of the scrutiny. Many examples could be cited regarding the regulation of this matter. However it is sufficient to point out as an example those in the IV Council of Toledo (a. 633), c. 19, which, although referring to the episcopate, can be extended to candidates who will receive sacred orders. Said canon affirms: "...deinceps qui non promeveantur ad sacerdotium ex regulis canonum credimus inserendum: id est qui in aliquo crimine detecti sunt, qui infamiae nota adspersi sunt, qui in haeresim lapsi sunt, qui in haeresi babtizati aut rebabtizati esse noscuntur, qui semetipsos absciderunt, aut naturali defectu membrorum aut decisione aliquis minime habere noscuntur, qui secundae uxoris coniunctionem sortiti sunt aut numerosa coniugia frequentarunt, qui viduam vel marito relictam duxerint... Quiquumque igitur deinceps ad ordinem sacerdotii postulatur, et in his quae praedicta sunt, exquisitus in nullo horum deprehensus fuerit atque examinatus probabilis vita atque doctrina extiterit, tunc secundum synodalia vel decretalia constituta cum omnium clericorum vel civium voluntate ab universis conprovincialibus episcopis aut certe a tribus in sacerdotio die dominica consecrabitur."[13]

This entire discipline is substantially recalled in the Decree of Gratian,[14] a source in which we find the tradition of the first millennium of the

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11. Cf. III Council of Carthage (397 A.D.), c. 22: "Nullus ordinetur clericus, nisi probatus fuerit vel episcoporum examine vel populi testimonio."

12. Cf. *Statuta Eccl. Antiq.*, c. 22, which discusses the *examen* which the bishop must make before he is consecrated.

13. Cf. J. VIVES, *Concilios visigóticos e hispano-romanos* (Barcelona-Madrid 1963), p. 199.

Church regarding this institution. The classic period of canon law speaks to us of the scrutinies that were carried out. One took place before the ordination and the other at the ordination itself. This manner of proceeding has not undergone any change. The rite of the second scrutiny is carried out at the ordination ceremony itself when the bishop conferring the order specifically asks if it is certain that the candidates are suitable. In response to this question, the priest who presents them answers: "From the information gathered from the Christian people and in the judgement given by those in the care of their formation I can assure that they are suitable."

The investigation intended to establish that the qualities required for ordination exist, is an aspect that first is entrusted to the rector of the seminary or the house of formation, who will write and send the corresponding certificate to the proper ordinary.

This investigation, according to the circular Letter *regarding the scrutinies on the suitability of the candidates* "must be carried out for each of the four moments of the iter of priestly formation: *admission, ministries, diaconate, and presbyterate.*"[15] In the case of the candidates for the permanent diaconate,[16] it must be carried out before the deacon's ordination, and always with the greatest diligence. As is evident, said investigation is binding *sub gravi*, since its object is none other than declaring that the person is apt and suitable to carry out the ministry to which he will be invested. Thus in c. 1029 it is affirmed that "Only those are to be promoted to orders who, in the prudent judgment of the proper bishop or the competent major Superior, all things considered, have sound faith, are motivated by the right intention, are endowed with the requisite knowledge, enjoy a good reputation, and have moral probity, proven virtue and the other physical and psychological qualities appropriate to the order to be received."

It is therefore evident that the rector of the seminary or house of formation must also put forth this prudent judgment, after weighing all circumstances, regarding the candidate's suitability and regarding the fact that the candidate possesses the qualities required by law. In this sense, the new *Ratio fundamentalis institutionis sacerdotalis* has stated that a special importance must be given to the prescribed scrutinies before anyone may be admitted to sacred orders. Immediately after the rector affirms this, in good conscience, all the possible information that can be gathered regarding the candidates (except that which is religiously related to the conscience), from the candidate himself or through others who know the candidate well, is sent to the bishop, "ut de candidatorum

14. D. 24, c. 2; D. 24, c. 5.
15. *Notitiae* 33 (1997), p. 496; *Comm.* 20 (1998), p. 51.
16. Cf. ibid., CCE, *Ratio fundamentalis diaconorum permanentium*, February 22, 1998, no. 62.

vocatione tuto iudicare possit. Si vero dubium perstet, tutior sententia sequenda est."[17]

4. This suitability, as stated in c. 1052 § 1, should be positively proven. That is, it is not sufficient that nothing to the contrary be found.[18] Moral certitude is required of the person who will make the judgment[19]. We could affirm that the verification of such suitability constitutes the proper object of the scrutiny. If any positive doubts arise, based on true reasons, regarding the suitability of an aspirant, the *CIC* affirms that the bishop should not ordain the candidate (c. 1052 § 3). This constitutes an evident argument for the moral certitude that is requested from the bishop before proceeding with any ordination. From this it is also inferred that it is up to the bishop of the diocese in which the ordinandi will be incardinated to make the judgement of suitability. The bishop will also take into account the results of the scrutinies performed by the rector of the seminary or by the major competent Superior when dealing with a member of a clerical religious institute of pontifical right or a society of apostolic life. In the case of the rector, the *RFIS* offers us a series of aspects that should be considered at the moment of making a judgement of suitability or not for the priestly ministry:

— *human and moral gifts* (sincerity, affective maturity, citizenship, fidelity to promises, concern for justice, sense of friendship, liberty and responsibility, industriousness, spirit of cooperation, etc.);

— *spiritual gifts* (love of God and neighbour, concern for fraternity, abnegation, docility, proven chastity, sense of faith and Church, apostolic and missionary solicitude, etc.);

— *sufficient intellectual capacity* (proper and good judgment, sufficient talent to carry out ecclesiastical studies, proper notion of the priesthood and its conditions, etc.).[20]

Together with these gifts, which are also set forth and developed in *Appendix V* of the circular Letter *regarding the scrutinies on the suitability of the candidates*,[21] the rector, in order to make a judgment of suitability, must examine, at the proper time, the state of physical and psychological health by a doctor (and by psychological experts, if there is a real reason therefor),[22] and will consider the eventual familial physical

17. Text in *EV* vol. S1, p. 902, no. 988.
18. PIUS XI, Enc. *Ad catholici Sacerdotii*, December 20, 1935: *AAS* 24 (1932), pp. 74–81; *RFIS*, 41. The outstanding aspect in c. 973 § 2). of the *CIC*/1917: "Episcopus sacros Ordines nemini conferat, nisi ex positivis argumentis moraliter certus sit de eius canonica idoneitate: secus non solum gravissime peccat, sed etiam periculo se committit alienis communicandi peccatis."
19. CDWDS, circular letter "regarding the scrutinies on the suitability of the candidates," October 10, 1997, in *Notitiae* 33 (1997), p. 495; *Comm.* 20 (1998), p. 50.
20. Cf. text in *EV* vol. S1, p. 900, no. 985.
21. *Notitiae* 33 (1997), pp. 504–506; *Comm.* 20 (1998), pp. 57–59.
22. *Notitiae* 33 (1997); *Comm.* 20 (1998), p. 54.

heredity.[23] Obviously the doctors and psychological experts to be consulted should be persons with proven human and Christian righteousness; a criterion that, it appears to us, is especially important.

In a case that it is not the proper bishop who ordains, it is sufficient that the dimmisorial letters specify that the documents are in hand and that the scrutinies required by the *CIC* have been carried out, as well as that the suitability of the candidate is established.

With respect to the *CIC*/1917, the *CIC* has introduced an innovation. Now it is not necessary to solicit obligatorily, as it was before, testimonial letters, whose principal purpose is to testify to the absence of impediments and irregularities in the ordinand. This aspect has been left to the free discretion and prudence of the diocesan bishop or the major Superior. Nonetheless, in the same wording of c. 1051, 2°, it seems convenient to do so in most situations. This allowance of discretion is, likewise, considered in reference to the banns or other information contained in the Instructions *Quam ingens* and *Quantum religiones* for members of religious institutes and societies of apostolic life, which are found described in some numbers of *Appendix II* of the circular Letter *regarding the scrutinies on the suitability of the candidates*.[24] For the religious, or members of a society of apostolic life, it is also prescribed that the candidate had been received into the institute or society in a definitive manner. That is, a candidate cannot receive sacred orders without first having made perpetual vows. In those religious where perpetual vows are not made, a space of three years from the moment in which temporal vows have been made is required In the case of societies where vows are not made, a term of three years from the moment in which the member enters into the novitiate is requested (c. 1052 § 2). This canon recognizes what had been determined in the Instr. *Quantum religionis*, which stated: "Quod ad ordinem maiorum susceptionem attinet, meminisse Superiores religiosos oportet, eos alumnos suos minime posse ad eosdem promoveri sinere, antequam professionem sive perpetuam, sive solemnem emiserint. In Religionibus ubi perpetua vota non emittuntur, Superiores districte vetantur, alumnos ante triennium completum votorum temporariorum ad ordines sacros promovere: in Societatibus vero sine votis—peracta, si adsit, perpetua seu definitiva cooptatione—ante triennium item completum post novitiatum cooptatione in ipsam Societatem."[25]

23. Cf. PABLO VI, Enc. *Sacerdotalis caelibatus*, June 24, 1967, no. 63; SCHO, Monitum *Cum compertum*, July 15, 1961: *AAS* 53 (1961), p. 571; SCRSI, Instr. *Renovationis causam*, January 6, 1969, no. 11 (*EV* vol. 3, 717); SCCE, *Directorium de formatione ad caelibatum*, April 11, 1974, no. 38 (*EV* vol 5, 275ff).

24. *Notitiae* 33 (1997), p. 501; *Comm.* 20 (1998), p. 55.

25. *AAS* 24 (1932), p. 80.

CAPUT III
De adnotatione ac testimonio peractae ordinationis

CHAPTER III
The Registration and Evidence of Ordination

1053 **§ 1. Expleta ordinatione, nomina singulorum ordinatorum ac ministri ordinantis, locus et dies ordinationis notentur in peculiari libro apud curiam loci ordinationis diligenter custodiendo, et omnia singularum ordinationum documenta accurate serventur.**

§ 2. Singulis ordinatis det Episcopus ordinans authenticum ordinationis receptae testimonium; qui, si ab Episcopo extraneo cum litteris dimissoriis promoti fuerint, illud proprio Ordinario exhibeant pro ordinationis adnotatione in speciali libro in archivo servando.

§ 1. After an ordination, the names of the individuals ordained, the name of the ordaining minister, and the place and date of ordination are to be entered in a special register which is to be carefully kept in the curia of the place of ordination. All the documents of each ordination are to be accurately preserved.

§ 2. The ordaining Bishop is to give to each person ordained an authentic certificate of the ordination received. Those who, with dimissorial letters, have been promoted by a Bishop other than their own, are to submit the certificate to their proper Ordinary for the registration of the ordination in a special register, to be kept in the archive.

SOURCES: c. 1010

1054 **Loci Ordinarius, si agatur de saecularibus, aut Superior maior competens, si agatur de ipsius subditis, notitiam uniuscuiusque celebratae ordinationis transmittat ad parochum loci baptismi, qui id adnotet in suo baptizatorum libro, ad normam can. 535 § 2.**

The local Ordinary, if it concerns the secular clergy, or the competent major Superior, if it concerns his subjects, is to send a notification of each ordination to the parish priest of the place of baptism. The parish priest is to record the ordination in the baptismal register in accordance with can. 535 § 2.

SOURCES: c. 1011

CROSS REFERENCES: c. 535 § 2

COMMENTARY

Luis Orfila

1. These canons address the registration and certificate of the ordination conferred. They therefore specify the procedure to be followed once the aspirant has received the diaconate or the priesthood: the ordination is to be entered in the register of the diocesan curia (c. 1053), and notification that this sacrament was conferred is to be sent to the parish of the place where the ordained was baptized (c. 1054). The two canons are, respectively, and almost literal transcription of cc. 1010 and 1011 of the *CIC*/1917; the variations are more of style than of content.

2. In c. 1053 we read of the existence of the register, which historically are prior to the *CIC*/1917, since was precisely this that elevated to general law what in past times had been a custom.

According to what is affirmed in c. 1053, once the candidate has received the ordination, this fact is to be entered in a special book of the curia of the place where the sacrament was administered, specifying in this way that it is the ordaining bishop who authentically certifies the ordination.

In this register a series of information is entered, which indicates: the name of each one ordained and the ordaining minister, as well as the place and the date in which the ordination was performed. In addition to this notation of the ordination in a special book of the curia, all the documents required by the law before proceeding with the conferring of sacred orders will be archived. These include the documents listed in cc. 1050

and 1051. This documentation constitutes a true and proper file for the ordinand. This file will be diligently safeguarded, as we are advised in this canon. It should be noted, likewise, that in the case where the person performing the ordination is different from the proper bishop, the archive of the place where the ordination took place would maintain the dimmisorial letters. In the case of the religious or members of a society of apostolic life, the major Superior will keep them.

The ordinand will receive from the bishop an authentic certificate of the order that has been conferred. In the case where a different bishop has administered the sacrament, the ordinandi should present the corresponding document to his ordinary, who will proceed with the notation in the register designated for this use.

3. Finally, c. 1054 establishes that the ordination of a candidate be notified to the parish priest of the place where the ordinandi was baptized, for the corresponding notation in the baptismal register. Thus the person to whom the notification of the reception of a sacred order is determined. This should be carried out by the ordinary of the place in the case of a secular person or by the competent major Superior in the case of the religious.